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## ADMINISTRATION OF MUNICIPAL CREDIT

INSTANCES of municipal default upon interest or principal of debt obligations now number more than two thousand in forty-one different states, with additional defaults occurring at an estimated rate of over one hundred a month.[1] That many other local governmental units, while not actually in default, are virtually insolvent seems certain from their inability to pay employees, their use of sinking funds to meet current expenses, and their failure to turn over funds owed to other political subdivisions. As a result of these two conditions, it is probable that obligations aggregating from $1,500,000,000 to $2,000,000,000 are uncollectible at the present time.[2] The character and significance of

1. A discussion of defaults and their extent may be found in the testimony of Representative Wilcox, HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, 73d Cong., 2d Sess. (1934) at 12.

2. Estimated in the summer of 1933 at $1,200,000,000, PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933) 1; estimated in the early part of 1934 at $2,000,000,000. HEARINGS, *op. cit. supra* note 1, at 17.

the groups which hold municipal securities[3] make it inevitable that the repercussions of this financial collapse should be felt throughout the economic structure. And the very magnitude of present local indebtedness, estimated at some $15,000,000,000,[4] makes the problem of preserving municipal credit for necessary future financing one of national importance.

Periods of extensive default on municipal obligations have been of sporadic occurrence.[5] The inability of many southern cities to meet indebtedness thrust upon them during carpetbag rule was one of the concomitants of the reconstruction period following the civil war. The depression years of the eighteen seventies and eighteen nineties precipitated defaults on the part of many municipalities, especially those in the west, which had issued heavy amounts of railroad aid and general improvement bonds. The present depression period has brought insolvency even to municipalities that in 1929 appeared to be conservatively financed and well managed.[6] Reduced land values, unemployment and bank failures have caused enormous increases in tax delinquency,[7] while available funds of the municipalities themselves have been permanently or temporarily lost through the closing of local banking institutions.[8] At the same

3. As of Dec. 31, 1932, it was estimated by Mr. Carl Chatters, editor of the *Bond Buyer*, that municipal bonds (including state bonds) were distributed as follows:

| | |
|---|---|
| Individuals with annual income exceeding $5,000 | $4,500,000,000 |
| Corporations except bank and insurance companies | $4,000,000,000 |
| Sinking funds, public trust funds, and investment funds of states and their political subdivisions | $3,380,000,000 |
| Banks | $2,800,000,000 |
| Life, fire and casualty insurance companies | $1,000,000,000 |
| Fraternal insurance companies | $500,000,000 |
| Individual investors, income under $5,000 | $900,000,000 |
| Other holders | $1,420,000,000 |
| TOTAL | $18,500,000,000 |

PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 2.

4. CLARK, THE INTERNAL DEBTS OF THE UNITED STATES (1933) 258. State and local net indebtedness has increased from $39.88 per capita in 1912, to $132.75 per capita in 1932. *Id.* at 254. This tremendous increase is, however, matched in great part by an increase in the national wealth between 1913-1914 and 1932-1933 from $192,000,000,000 to $300,000,000,000, and by an advance in total long term indebtedness during the same period from approximately $38,000,000,000 to $134,000,000,000. *Id.* at 10 and 13.

5. For a discussion of eras of default prior to the present one, see PUBLIC ADMINISTRATION SERVICE, *op. cit. supra* note 2, at 10 *et seq.*

6. CLARK, *op. cit. supra* note 4, at 271.

7. A study of fifty representative cities revealed that tax delinquencies increased from 10.2% in 1929 to 15.5% in 1931 and 18.85% (partially estimated) in 1932. Fifteen per cent is regarded as the maximum margin of safety. Bird, *American Cities Face 1933* (1933) 22 NAT. MUN. REV. 51.

8. CLARK, THE INTERNAL DEBTS OF THE UNITED STATES (1932) 255. The default of Detroit, Michigan, at first thought to be temporary, was occasioned by the fact that its funds were on deposit in the banks which closed in February, 1933. (1933) 22 NAT. MUN. REV. 153.

time, the position of the municipality as one of the chief governmental agencies for relief has necessitated extraordinary expenditures.

Business recessions, however, do not alone explain the recurring failure of cities to meet their obligations. The factors which may adversely affect the financial position of a taxing unit are many; for the most part, a depression but aggravates conditions already existing. Extensive contractions of the property tax base, and consequently of the income of a municipality,[9] have occasionally resulted from physical catastrophes,[10] abandonment of local manufacturing in response to shifting industrial centers,[11] or depletion of important natural resources.[12] But more often the cause of financial distress is traceable to an over-expansion of indebtedness.[13] A number of things may contribute to such a condition. Municipalities have not been free from modern tendencies to resort to borrowing in order to live in a manner better than could be afforded; comparative figures show that a greater portion of the proceeds of municipal bond sales is devoted to non-income producing improvements in America than in Europe.[14] Of perhaps greater importance, however, has been the rapid industrialization of this country. The development of industries within a city, with resulting sharp increases in its population, have in some instances necessitated large investments for legitimate expansion of municipal plants and services.[15] Such investments were frequently made possible only by borrowed funds, with the result that debt charges were incurred at least equalling and perhaps exceeding the corresponding increase

9. See PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 9.

10. The experience of Astoria, Oregon, is illustrative. The present insolvency of this municipality is accounted for in part by two fires occurring in 1922, one of which destroyed an industrial enterprise, the other a part of the business section of the town. Information from a pamphlet circulated to bondholders of the city, June 15, 1933.

Such catastrophes not only deplete the tax base but also throw a heavy and unexpected burden of expense upon the local government afflicted. Thus Galveston, Texas, defaulted in payment of indebtedness following a severe flood; while Memphis found itself in financial straits following a plague of yellow fever. Chatters, *The Problem of Municipal Bond Defaults,* in CURRENT PROBLEMS IN PUBLIC FINANCE (1933) 333.

11. An effort to meet one phase of this problem is illustrated by Nueces Valley Tounsite Co. v. San Antonio, Uvalde & Gulf Rr. Co., 67 S. W. (2d) 215 (Tex. 1933).

12. The present financial predicament of Astoria, Oregon, to which the conflagrations of 1922 were contributing factors, has been precipitated by the depletion of timber resources that once formed a large part of the tax base. See note 10, *supra.*

13. CLARK, *op. cit. supra* note 4, at 5-23; Chatters, *supra* note 10, at 334. It is, of course, difficult to say whether present troubles are caused by over-expansion preceding the depression, or by the depression which followed a period of rapid development.

14. Powers, *Increasing Municipal Indebtedness* (1914) 3 NAT. MUN. REV. 102.

15. Detroit, Michigan, is interesting in this connection. Expanding with the growth of the automobile industry, Detroit's population doubled during each decade since 1900. Improvements were necessary to accommodate the growing population. The government under whose supervision much of this expansion occurred was apparently able and honest. If the expenses incurred by it were unwise, they were at least carefully considered and it is doubtful that the errors now apparent could have been avoided. The resulting debt structure was such that heavy maturity of obligations fell due in the decade from 1930-40.

in tax revenue. And not uncommonly excessive municipal borrowing has been a product of unbounded optimism in contemplating a city's future.[16]

To the disproportion between income and total operating and debt costs thus arising from contractions in a municipality's tax base or from undue expansion of its indebtedness, or from a combination of these causes, unwieldy governmental organization and mismanagement have added further difficulties. One of the primary factors prompting the movement for more effective forms of municipal government has been the undoubted fact that loosely organized local administration results in unnecessary expenses as a consequence of duplication in activities and lack of proper control over disbursements. Moreover, this condition in municipal government invites political favoritism with its inevitable concomitant of improper expenditures.[17] On the other hand, tax collection is frequently lax, taxing officials leaving payment to the initiative of the taxpayer rather than themselves assuming the burden of enforcement; while foreclosure of tax liens is often long deferred. Yet notwithstanding this, little or no effort may be made to set up reserves to cover delinquent taxes. The untoward effect of the resultant cleavage between the operation of the collection machinery and the demands upon the municipality's finances is aggravated by a failure to synchronize collections with maturity dates of obligations. Such a failure necessitates resort to tax anticipation warrants[18] which not only burden the city with new interest charges but remain as outstanding indebtedness if current income[19] is insufficient to meet them.[20] The refusal of bankers to finance short term borrowing on advantageous terms when such a floating indebtedness exists forces a funding of any carry-over; the ultimate result is thus an increase in the amount of long term debt without any corresponding benefit accruing to the municipality.

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Consequently at the present time Detroit is unable to repay its maturing debts although eventual repayment in full is assured. *Cf.* (1931) 45 AM. CITY (No. 2) 107; (1932) 27 J. AM. STATIS. ASS'N 141; (1916) 5 NAT. MUN. REV. 620; (1917) 6 *id.* 424, 515, 707, 710; (1918) 7 *id.* 322; (1922) 11 *id.* 317; (1924) 13 *id.* 720; (1925) 14 *id.* 56, 132, 134; (1926) 15 *id.* 108, 623; (1933) 22 *id.* 153, 352.

16. The sale of bonds by Coral Gables, Florida, to enable the completion of an extensive system of streets, sidewalks and sewers has resulted in a situation in which 31,294 real estate lots have been developed for a city of six thousand population and only 1,866 buildings erected; the per capita debt increased to over $1300 per person; and the city able to repay at most $4,000,000 of its total debt of $9,000,000. PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 8; (1931) 45 AM. CITY (No. 4) 121.

17. For recent instances of this in Chicago and Cook County, Illinois, see Ligitt, *The Plunder of Chicago* (1932) 25 AM. MERCURY 269.

18. *Cf.* Oakey, *Municipal Accounting and Finance* (1927) 37 AM. CITY 243; (1932) 14 PUB. MANAGEMENT 170.

19. Warrants may be limited by their terms so as to be payable only from particular funds. Upon failure of these funds there is no legal remedy for their payment. 6 MCQUILLIN, MUNICIPAL CORPORATIONS (2d ed. 1928) § 2412.

20. Chicago in 1928 and 1929 followed the usual practice of issuing warrants against anticipated revenue without, however, ascertaining the actual value of the property involved. The subsequent assessment was at a lower figure than the estimate, delinquencies were high, and collections were $12,000,000 less than the face amount of warrants outstanding. *Cf.* Martin, *Pulling Chicago's Local Governments "out of the Red"* (1930) 19 NAT. MUN. REV. 75.

## I

## EFFORTS TO AVERT INSOLVENCY

In an attempt to counteract these contributing causes of insolvency, and thus to avoid default on their obligations, municipalities have resorted to a variety of schemes for increasing revenues, decreasing expenses, and borrowing additional funds.

### A. Increases in Revenues

*Raising the Tax Rate, Extending the Tax Base.* The dependence of local governmental units upon the general property tax for two-thirds or more of their revenues[1] in itself severely limits, especially in a time of depression such as the present, their ability to avert insolvency. The virtual impossibility of taxing personalty effectively and the consequent metamorphosis of the general property tax into a tax on real estate, has been increasingly apparent in recent years.[2] Thus it has been alleged that although the value of taxable personal property in Cook County, Illinois, is three times that of taxable real property, 83 per cent of the burden is borne by real estate.[3] In New York, personal property assessments in 1930 constituted only 1.3 per cent of the property tax base, and collections were even less significant;[4] as a result, local levies on personalty have been discontinued.[5] But while there thus rests upon real estate the principal burden of supporting local government,[6] of all possible sources of revenue the tax on real property is least flexible and therefore least able to respond to such extraordinary demands as have been made by the current depression. This period has been marked by a precipitate decline in property values[7] and a correspondingly marked increase in property tax delinquencies.[8]

1. In 1931, 310 cities whose population comprised 38.6% of the total population of the United States, obtained approximately 66.2% of all their revenues from general property taxes. U. S. Bureau of Census, Financial Statistics of Cities Having Over 30,000 Population (1931).

2. On the breakdown of the general property tax see generally Green, Theory and Practice of Modern Taxation (1933) c. 2; Lutz, Public Finance (2d ed. 1929) c. 17; Seligman, Essays in Taxation (10th ed. 1928) c. 2.

3. Bistor v. McDonough, 348 Ill. 624, 181 N. E. 417 (1932).

4. Report of New York State Commission for the Revision of the Tax Laws (1932) 123.

5. N. Y. Laws (Ex. Sess.), 1933 c. 470. For an interesting account of the difficulties involved in assessing personal property in Palm Beach County, Florida, see Harjim v. Owens, 52 F. (2d) 530, 534 (S. D. Fla. 1931).

6. Real estate taxes probably provide from 75% to 90% of the revenues from general property taxes. Notes 1 and 3, *supra*. Although real estate property taxes produced a smaller proportion of total local revenues in 1933 than in 1931, much of the income from other sources will be non-recurring (as, for example, that from state and federal grants). The general property tax remains the most important source of municipal income. Leffler, *Ebb Tide in Taxation* (1933) 22 Nat. Mun. Rev. 541; Editorial (1934) 28 Ill. L. Rev. 662, 664. See note 158, *infra*.

7. For an illustration of how serious the situation may become, see Federal Title & Mortgage Guaranty Co. v. Lowenstein, 166 Atl. 538, 539 (N. J. Eq. 1933).

8. Although in some localities, collections of real property taxes had lagged before 1930,

The delinquencies have occurred most frequently with the least valuable properties,[9] and have continued until parcels were worth less than the accrued taxes, interest charges and penalties.[10] Of 139 tax sales in 1930 in Lorrain County, Ohio, for example, only 24 parcels of land brought more than enough to pay the costs of sale alone; only one piece sold at a price sufficient to pay taxes and accrued penalties.[11] When to these difficulties is added the traditional hostility of the courts towards tax deeds,[12] it becomes apparent that attempted enforcement even of normal municipal taxes in many cases results only in the purchase of the property by the city or the county; thus no revenue is in fact secured, and the property is removed completely from the tax rolls.[13] And increases in the tax rate to meet current demands for relief of human want are productive only of increased delinquencies.

To these practical limitations upon property tax rates, the law adds others. Constitutions or statutes generally limit municipalities to a rate sufficient to provide for current expenditures;[14] some allowance may apparently be made

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the increased delinquency after that year was general throughout the country. Thus, although in Cook County, there was an abnormal increase as early as 1927, the 1930 levy, payable the latter part of 1932, was 41% delinquent. Simpson, *Tax Delinquency—Economic Aspects* (1933) 28 ILL. L. REV. 147, 148. The levy in Detroit for 1928-1929 was only 8.8% delinquent in contrast to a 36% delinquency in the 1931-1932 levy. Beyer, *Financial Dictators Replace Political Boss* (1933) 22 NAT. MUN. REV. 162, 166. The four-year trend for tax delinquency for cities over 50,000 population has been computed by Frederick L. Bird, and is reproduced as follows from (1934) 23 NAT. MUN. REV. 111:

| 145 cities | 1930 | 1931 | 1932 | 1933 | Increase |
|---|---|---|---|---|---|
| Median | 10.8 | 13.3 | 20.1 | 25.2 | 12.2 |
| Av. of Percentages | 12.9 | 15.8 | 22.1 | 26.3 | 13.2 |

These figures, of course, can give no idea of the wide discrepancies in the experience of the individual cities. The figures for each city are, however, available in the above citation.

9. A great number of vacant city lots were found on the delinquency lists of various cities. See REPORT, *op. cit. supra* note 4 (Memo. 12), at 16.

10. Leffler, *supra* note 6, at 543; Aldis, *Real Estate and Taxes* (1934) 39 CUR. HIST. 513, 519; Nilsson, *Why Pay Property Taxes* (1932) 10 TAX MAG. 131, 216.

11. Nilsson, *supra* note 10, at 153.

12. The purchaser takes at his peril; any failure to observe the strict letter of the law during foreclosure of the lien will void the deed. Perham v. Putnam, 82 Mont. 349, 267 Pac. 305 (1928); Shubat v. Glacier County, 93 Mont. 160, 18 P. (2d) 614 (1932) (deed void because not stating proper amount due to county); Adams v. Rogers, 158 Okla. 163, 13 P. (2d) 170 (1932) (void for failure to file application with county clerk); *cf.* Bowers v. Glos, 346 Ill. 623, 179 N. E. 80 (1931); Moe v. Jones, 153 Wash. 476, 279 Pac. 741 (1929). For this reason, and also because of the long period between delinquency and sale, professional speculators—usually the only attendants of tax sales—will pay little for delinquent lands. Nilsson, *supra* note 10, at 216.

13. With regard to the creation and extent of this new public domain, see Simpson, *supra* note 8, at 149.

14. E.g., CONN. REV. STAT. (1930) §§ 1204, 1208, 1216; FLA. COMP. LAWS (1927) §§ 937-939, 3000-3004; KAN. REV. STAT. (1923) §§ 79-1801 to 79-1806, 79-1901 to 79-1944; N. Y. TAX LAW (Cahill, 1930) arts. 1-5.

for anticipated delinquencies,[15] while the obligation to creditors requires that the rate be sufficient to pay pre-existing debt charges,[16] and to finance permanent improvements[17] which have been approved by the electorate.[18] Moreover, nineteen state constitutions[19] limit the general property tax to a certain percentage of assessed valuation of taxable property, and similar statutory limits included in municipal charters or imposed by general legislation are almost universal.[20] Usually these tax limits may be exceeded upon an affirmative vote of a certain percentage of the municipality's electorate; some additional flexibility is obtained in a few states by varying the limit according to population, or by authorizing a yearly increase in the tax rate.[21] In some jurisdictions the limitations may be exceeded without electoral approval when an emergency exists.[22] But these concessions are far from sufficient to enable municipalities to function properly under limitations in many cases provided decades ago for very much smaller cities, and based upon different conceptions of value and of proper fields of municipal activities. Evasions of these limitations have therefore been legion. One escape has been found in extensive use of special assessments to pay for improvement projects. And since such assessments cannot exceed the benefit conferred upon the assessed property without constituting a taking of property without due process of law,[23] the assessment district has frequently been incorporated[24] and authorization pro-

15. Fitzpatrick v. Thomas, 311 Pa. 191, 166 Atl. 493 (1933), noted in (1933) 43 YALE L. J. 143.

16. This is true regardless of constitutional or statutory tax limits imposed after the debts were contracted. Perry v. Town of Samson, 11 F. (2d) 655 (S. D. Ala. 1926); *cf.* Von Hoffman v. Quincy, 71 U. S. 535 (1866); Bee v. City of Huntington, 171 S. E. 539 (W. Va. 1933).

17. The tax rate must be sufficient to pay interest charges and to provide a sinking fund for the retirement of bonds sold. See, e.g., N. Y. GEN. MUNICIPAL LAW (Cahill, 1930) arts. 1, 6; OKLA. CONST. art. X, § 26.

18. Improvements of this nature, which cannot be financed out of current revenues, must ordinarily be so approved. ARK. CONST. AMENDS. 11; CAL. CONST. art. XI, § 18; IDAHO CONST. art. VIII, § 3; KY. CONST. §§ 157, 158; LA. CONST. art. XIV, § 14f; MO. CONST. art. X, §§ 12, 12a; OKLA. CONST. art. X, §§ 26, 27; UTAH CONST. art. XIV, §§ 3, 4. These restrictions and those cited in note 14, *supra*, in practice operate as debt limits, not as tax limits.

19. Alabama, Arkansas, California, Georgia, Idaho, Louisiana, Missouri, Michigan, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Washington, West Virginia, and Wyoming. See PUBLIC ADMINISTRATION SERVICE No. 36, *Property Tax Limitation Laws* (1934) 38, 39.

20. *Ibid.*

21. *Ibid.*

22. See, e.g., CAL. CONST. AMENDS. (1933); Ind. Acts (Sp. Sess.) 1933 c. 10; *cf.* Burr v. City and County of San Francisco, 186 Cal. 508, 199 Pac. 1034 (1921) (mandatory salary increases are not temporary charges created by the emergency of the 1906 fire, justifying increasing the tax rate beyond the limit); Murray v. Zook, 187 N. E. 890 (Ind. 1933) (finding of county board of tax adjustment that an emergency exists is conclusive in the absence of a showing of fraud).

23. Norwood v. Baker, 172 U. S. 269 (1898).

24. Where improvement districts are organized by incorporation, and the levy provided

cured for a levy of its own taxes. Creation of such over-lapping taxing districts, stimulated both by efforts to evade tax and debt limits and by a desire to take certain functions, such as school administration, "out of politics,"[25] has required of taxpayers in some localities tax payments that during the depression have proved altogether too burdensome.[26] Thus Chicago, for example, had 27 independent tax levying bodies in 1933; and Cook County, Illinois, had no fewer than 419.[27] Where such conditions prevail, tax increases to avoid municipal defaults may be impossible.[28] Public opposition to this multiplication of tax levies led eight states in 1932 and 1933 to adopt blanket limits upon the total taxation to which a given piece of property might be subjected;[29] such limits, absoutely rigid and impossible of evasion, have made provision of adequate municipal relief extremely difficult.[30] Attempts to solve these and similar problems through unequal[31] or excessive[32]

for by statute is in form one to pay the annual charges on bonds, the levy may be permitted to exceed the benefit to the property owner. The bonds in such a case become the general obligation of the district. Norris v. Montezuma Valley Irrigation District, 248 Fed. 369 (C. C. A. 8th, 1918), *cert. den.*, 248 U. S. 569 (1918); Note (1926) 40 A. L. R. 1352.

25. Beyer, *supra* note 8, at 167.

26. Porter, *A Plague of Special Districts* (1933) 22 NAT. MUN. REV. 544.

27. Beyer, *supra* note 8, at 167.

28. PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults,* (1933) 9.

29. Ind. Acts 1933, c. 97 (taxation by all units of government upon property limited to 1.5% of assessed valuation of property within municipalities, 1.8% outside); MICH. CONST. art. X, § 21, amendment of 1932 (1.5% general limit), see MICH. LAWS 1933, p. 517; NEV. CONST., amended Laws 1933, p. 368 (proposed 5% limit, not yet ratified); N. M. CONST. art. VIII, § 2, amendment of 1933 (2% general limit); OHIO CONST. art. XII, § 2, amendment of 1933 (1% general limit), see OHIO CODE (Page, Supp. 1934) p. 74; OKLA. CONST. art. X, § 9, amendment of 1933 (2.7% general limit), OKLA. LAWS 1933, c. 169; Wash. Laws 1933, c. 4 (4% on statutory base of 50% assessed valuation); W. VA. CONST. art. X, § 1, amendment of 1932 (.5% on personal property; 1% on residences and farms occupied by owner; 1.5% on other rural real estate; 2.0% on urban real estate). The Washington limit was adopted by initiative.

The limitations thus imposed may be exceeded by the vote of a certain percentage of the electors, except in Indiana, where the approval of the Tax Adjustment Board is necessary.

30. See Leffler, *supra* note 6, at 543. The plight of West Virginia municipalities was particularly serious; revenues from the general property tax were reduced, as a result of the blanket limit, from $40,000,000 in 1932 to an estimated $23,000,000 in 1933. See Sly and Shipman, *West Virginia S. O. S.* (1933) 22 NAT. MUN. REV. 548. New Mexico's problems are also grave. See note 158, *infra.*

31. See, e.g., Harjim v. Owens, *supra* note 5, where the court ordered a reassessment of Palm Beach County for 1929 and 1930. *Cf.* Bistor v. McDonough, *supra* note 3, where the Illinois court refused to grant relief on the ground that the taxpayer should have presented his complaint before the Board of Review.

32. Most of the complaints alleging excessive assessments have been brought before administrative bodies. In Bistor v. McDonough, *supra* note 3, at 626, 181 N. E. at 418, plaintiff alleged that 35,000 complaints were filed with the board of review of Cook County in 1927, 100,000 in 1928, and 43,000 in 1929, and that few of these were heard. A reassessment, ordered by the state tax commission, and supervised by experts, consumed 18 months. See McDonough v. Cesar, 349 Ill. 372, 376, 182 N. E. 448, 450 (1932). No taxes were levied during this period.

assessments have also encountered strenuous opposition. The number of complaints disputing property assessments led the Washington legislature to authorize administrative officers to reassess individual property summarily;[33] the state supreme court, however, held the law to be an unconstitutional delegation of the taxing power.[34] A number of other state legislatures have ordered reductions in assessed valuations,[35] and reassessments required by courts or initiated by assessment authorities have generally resulted in lower tax bases.[36] Statutes[37] declaring that property should be taxed at its "full market value" are probably of little significance unless the assessment machinery[38] is adequate to cope with the problem of valuation at a time when sale of real estate is virtually impossible.[39] It is thus apparent that neither through increases in the property tax rate nor through extensions of the tax base can municipalities find the escape they seek from impending defalcation.

*Collection of Delinquent Taxes.* Depression efforts to increase municipal revenues have for this reason been directed principally to the return of delinquent property to the tax rolls, the payment of delinquent taxes, the more efficient collection of current taxes, and the development of new sources of revenue. Much delinquent property still unsold three years after its first offering has been restored to local tax rolls in Nebraska under a statute[40] permitting sale, free of all liens, at the highest price bid even though that price does not equal accrued taxes, interest and penalties.[41] The validity of similar statutes in other jurisdictions has generally been sustained against attacks alleging violation of constitutional requirements of uniform taxation and equal protection of the law, even when the result is to release liens of governmental units;[42] it must be clear, however, that the full amount of

33. WASH. REV. STAT. (Remington, 1932) §§ 11301-11308.

34. State Tax Commission v. Redd, 166 Wash. 132, 6 P. (2d) 619 (1932).

35. CAL. CONST., as amended by Cal. Laws 1933, c. 84 (reassessment in counties damaged by earthquake); Kan. Laws 1933, c. 323 (reduction of 20% from 1932 valuations); Minn. Laws 1933, c. 359 (assessments reduced from 33% to 20% on rural, and from 40% to 25% on urban homesteads).

36. See Leffler, *supra* note 6, at 543; Aldis, *supra* note 10, at 519; N. Y. Times, March 30, 1934, at 1.

37. *Cf.* CAL. CONST., as amended by Cal. Laws 1933, c. 63 (full cash value); Iowa Acts 1933, c. 121 (actual value instead of one fourth thereof); N. M. Laws 1933, c. 107 (market value); Ore. Laws 1933, c. 142 (usefulness under normal conditions to be considered).

38. For a description of the machinery to be used in the reassessment recently ordered in New York City, see N. Y. Times, March 30, 1934, at 1.

39. Other factors have also contributed to a lower tax base. Railroads and utilities have in some instances been made subject only to state taxes. PUBLIC ADMINISTRATION SERVICE, *loc. cit. supra* note 28. And public acquisition of delinquent properties on foreclosure sales has decreased the tax base. See note 13, *supra.*

40. NEB. COMP. STAT. (1929) § 77-2039.

41. Commercial Savings & Loan Association v. Pyramid Realty Co., 121 Neb. 493, 237 N. W. 575 (1931).

42. Ranger Realty Co. v. Miller, 102 Fla. 378, 136 So. 546 (1931); Commercial Savings & Loan Association v. Pyramid Realty Co., *supra* note 41; Ledegar v. Bockoven, 77 Okla. 58, 185 Pac. 1097 (1919); *cf.* Dowling v. Butts, 149 So. 746 (Fla. 1933) (owner may be

such liens cannot be realized.[43] Yet a number of courts have held that sale of lands within special assessment districts for less than accrued taxes, interest and penalties impairs the district's obligation upon its bonds.[44] The distinction is, however, justified, since the special assessment bondholder has no lien on general revenues of the district.

Relief to the delinquent taxpayer appears to be exclusively within the legislative domain. No matter what the hardship, the courts are powerless, in the absence of specific authorization, to release penalties on[45] or extend the time for payment of[46] taxes; to do so would be to usurp the legislative function.[47] Nor can a governor grant a general amnesty discharging tax penalties; his power in this regard is confined to the release of criminal penalties.[48] While statutes of the type discussed above are not designed so much to attract the delinquent taxpayer as to restore the revenues of the taxing district itself, the former may take advantage of them by purchasing his land as a stranger and thereby in effect redeeming it without full payment of the sums due.[49] Moreover, a large number of statutes recently enacted make direct concessions to delinquents in the expectation that payment of overdue obligations will thereby be encouraged. Thus there now exist laws permitting payment of delinquent taxes in instalments,[50] reducing or remitting penalties and interest on delinquencies,[51] postponing the time for payment of those taxes already

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permitted to redeem lands purchased by state at tax sale and held for two years, without paying penalties). See Comment (1933) 21 CALIF. L. REV. 376.

43. *Cf.* Moore v. Gas Securities Co., 278 Fed. 111 (C. C. A. 8th, 1921).

44. Malott v. Board of Commissioners of Cascade County, 89 Mont. 37, 296 Pac. 1 (1931); *cf.* Moore v. Gas Securities Co., *supra* note 43; Shull v. Lewis and Clark County, 93 Mont. 408, 19 P. (2d) 901 (1933).

45. Lamont Savings Bank v. Luther, 200 Iowa 180, 204 N. W. 430 (1925).

46. State v. Fifth Judicial District Court, 36 N. M. 151, 9 P. (2d) 691 (1932).

47. *Id.* at 153, 9 P. (2d) at 692. It appears, however, that the district courts of the state had frequently entered orders of this kind, either because the tax rolls were not ready on time or for economic reasons.

48. Hutton v. McCleskey, 132 Ark. 391, 200 S. W. 1032 (1918).

49. Nilsson, *supra* note 10, at 216.

50. Ariz. Laws 1933, c. 72, allows payment of real estate taxes delinquent June 1, 1933 in twenty semi-annual instalments, beginning November 1, 1933, provided current taxes are paid. Failure to pay two such instalments makes original tax due and subject to sale. See also: Cal. Laws 1933, c. 1018; Ind. Laws 1933, c. 30; Md. Laws, 1933, c. 4; Mich. Laws 1933, no. 126; Minn. Laws 1933, c. 337; Mo. Acts 1933, pp. 451, 452; N. J. Stat. Serv. (Feb., 1934), § 208-444a; N. Y. Laws 1933, c. 679; N. C. Laws 1933, c. 181; Ohio Laws 1933, S. B. 42; Ore. Laws 1933, c. 462; Pa. Laws 1933, no. 42; S. D. Laws 1933, c. 194; Tex. Laws 1933, c. 169; Utah Laws 1933, c. 61; Va. Acts 1933, c. 35; Wash. Laws 1933, c. 53; Wis. Laws 1933, c. 244.

51. Typical statutes are those of Michigan, Public Acts 1933, no. 126, cancelling penalty and interest on delinquent taxes of 1931 and prior years, and Public Acts 1933, no. 267, which provides that taxes for 1932 and prior years may be paid on or before Nov. 1, 1933 without penalty or interest. See also: Ark. Acts (Ex. Sess.) 1933, no. 2, p. 3; Fla. Gen. Laws 1933, cc. 16032, 16038; Idaho Laws 1933, cc. 9, 41, 73; Ind. Acts 1933, c. 30; Kan. Laws 1933, c. 313; Minn. Laws 1933, c. 414; Mo. Acts 1933, S. B. 80, p. 423; Mont. Laws

levied[52] or for tax sales on delinquent property,[53] and increasing the redemption period on delinquent lands held by governmental units.[54] Many of these enactments were unfortunate. The leniency shown led taxpayers to demand further concessions, and in many states the legislators responded[55] with a generosity that had serious effects upon municipal credit.[56] Creditor groups in some instances were able to limit such concessions by making them available only upon payment of all current taxes,[57] and imposition of this

1933, c. 41; Neb. Laws 1933, c. 155; N. M. Laws 1933, c. 96; N. Y. Laws 1933, c. 468; N. C. Laws 1933, c. 181; N. D. Laws 1933, c. 255; OKLA. STATS. (1931), § 12720, Laws 1933, cc. 1, 41; Ore. Laws 1933, c. 462; Tenn. Acts 1933, cc. 22, 126; Tex. Laws 1933, c. 169; Utah Laws 1933, c. 61; Wash. Laws 1933, c. 53; W. Va. Laws 1931, cc. 38, 39; Wis. Laws 1933, c. 288; Wyo. Laws 1933, c. 72.

52. Iowa Acts 1933, c. 124 extends the time of payment without penalty of the first instalment of 1933 taxes. The following statutes are in general similar: Cal. Laws 1933, c. 100. 103, 591; Fla. Gen. Laws 1933, c. 16253; Minn. Laws 1933, cc. 36, 38; Mont. Laws (Ex. Sess.) 1933, c. 1; Neb. Laws 1933, c. 155; N. Y. Laws 1933, c. 91; Ohio Laws 1933, H. B. 663, p. 544, Ex. Sess., S. B. 24; Okla. Laws 1933, c. 209; Pa. Laws 1933, no. 75, p. 214; S. C. CODE (Michie, 1932) § 3155; Tenn. Acts 1933, c. 7; Tex. Laws 1931, c. 3, § 1; Wash. Laws 1933, c. 82; Wis. Laws 1933, c. 16.

53. An example of this type of statute is Ind. Acts 1933, c. 2, postponing 1932 delinquent tax sales until 1934. See also Ariz. Laws 1933, c. 72; Cal. Laws 1933, c. 591; Fla. Gen. Laws 1933, c. 16252; Iowa Acts 1933, c. 133; Md. Laws 1933, c. 196; Mich. Acts 1933, no. 2, p. 3; Minn. Laws 1933, c. 337; N. D. Laws 1933, c. 264; Pa. Laws 1933, no. 84, p. 239, no. 279, p. 1134; Tenn. Acts 1933, c. 22; Wash. Laws 1933, c. 53; Wis. Laws 1933, cc. 81, 350.

54. A typical statute is Minn. Laws 1933, c. 414, extending from three to seven years from date of sale the redemption period on land sold for 1926 and 1927 delinquent taxes and bid in by the state. See also Ark. Acts (Ex. Sess.) 1933, no. 2, p. 3; Idaho Laws 1933, cc. 2, 3; Ind. Acts 1931, c. 12; Kan. Laws 1933, c. 312; Mont. Laws 1933, cc. 49, 125; N. C. Laws 1933, c. 181; N. D. Laws 1933, c. 258; Okla. Laws 1933, c. 41; S. D. Laws 1933, c. 198; Tenn. Laws 1933, c. 22; Utah Laws 1933, c. 61; Wis. Laws 1933, c. 244.

55. Examples are legion of ever-increasing leniency on the part of legislatures. Kansas: Laws 1933, c. 313, extended to Jan. 1, 1934, the period for redemption without penalty of lands bid in by a county at tax sales. Laws (Sp. Sess.) 1933, c. 120, further extended the redemption period until Jan. 1, 1935. Ohio: Laws 1933, H. B. 663, p. 544, extended the time for payment without penalty of 1933 taxes, until June, 1933. Laws (Sp. Sess.), S. B. 24, postponed the date of payment of the same taxes to Oct., 1933. Pennsylvania: Laws 1931, no. 132, p. 280, deferred until 1931 tax sales of property on which taxes for 1930 or prior years were delinquent. Laws 1933, no. 84, p. 239, further postponed the date of sale of such property to 1933. Texas: Laws 1931, c. 3, extended the time for payment of 1930 taxes, without penalty, to Oct. 15, 1931. At the last legislature this was extended still further to Sept. 30, 1933, although providing for a nominal (1%) penalty. Laws 1933, c. 169. Legislatures having continued to grant concessions such as these in the past, will be expected to do the same in the future. See (1934) 23 NAT. MUN. REV. 39.

56. Linen, *Causes and Effects of Deterioration of Municipal Credit* (1934) 23 NAT. MUN. REV. 87.

57. E.g., Fla. Gen. Laws 1933, c. 16252, §§ 3, 5; Ind. Acts 1933, c. 30 (release of penalties); Kan. Laws 1933, c. 312; Mont. Laws 1933, c. 125 (lengthening redemption period).

condition was sometimes fairly effective.[58] But even this type of statute entailed an unnecessary loss of revenue and security in failing to discriminate between delinquent taxpayers who could pay in full and those who were really destitute.[59] Some legislatures did, however, recognize and overcome the objection by authorizing administrative or municipal officials to release penalties or compromise the principal of tax obligations only in cases of need.[60]

The constitutionality of these measures has been seriously questioned. By relieving delinquents of accrued interest and penalties, and certainly by reducing the principal of tax obligations or granting moratoria on tax sales, the legislatures discriminate against taxpayers who by paying promptly have been deprived of the use value of their money.[61] And the statutes enabling municipal and administrative officials to compromise tax obligations at their discretion discriminate not only between prompt and delinquent taxpayers,[62] but also among the delinquents themselves.[63] If the rights of lienholders or bondholders are involved, moreover, the obligations of their contract with the municipality may be impaired by legislation remitting or reducing interest payable to the taxing unit and through it to the creditor.[64] Similarly, retroactive application of statutes extending the redemption period to lands purchased by individuals at tax sales cannot be upheld[65] unless it be upon

58. See (1934) 23 NAT. MUN. REV. 39.

59. *Ibid.*

60. Colo. Laws 1933, c. 184, authorizes county commissioners to compromise up to 50% of the principal of taxes delinquent prior to 1930, to secure payment; see also Fla. Laws 1933, cc. 15887, 15917, FLA. COMP. LAWS (Skillman, Supp. 1934) §§ 1003(48)-1003(54); ILL. REV. STAT. (Smith-Hurd, 1933) c. 120, § 212; Minn. Laws 1933, c. 414; Nev. Laws 1933, c. 171; N. J. STAT. SERV. (1932) §§ 208-74c, 136-4700 (212); N. J. STAT. SERV. (1933) § 208-444a (76); Pa. Laws 1933, no. 229, p. 1018; S. D. Laws 1931, c. 260; TENN. CODE (1932) § 1607.

61. Mittendorf v. Hoy, 151 So. 1 (Fla. 1933); Sanderson v. Bateman, 78 Mont. 235, 253 Pac. 100 (1927); Kain v. Fischl, 94 Mont. 82, 20 P. (2d) 1057 (1933); State v. Montoya, 32 N. M. 314, 255 Pac. 634 (1927).

62. *Cf.* Richards v. Armstrong, 17 Utah 166, 53 Pac. 981 (1898).

63. *Cf.* Sanderson v. Bateman, *supra* note 61 (to permit redemption of land sold to counties without payment of penalties discriminates against delinquent owners of property sold to individuals).

64. *Cf.* Malott v. Board of Commissioners of Cascade County, *supra* note 44.

65. The interest acquired by the purchaser must be determined by the law prevailing at the date of sale. Teralta Land & Water Co. v. Shaffer, 116 Cal. 518, 48 Pac. 613 (1897); Hull v. State, 29 Fla. 79, 11 So. 97 (1892); Solis v. Williams, 205 Mass. 350, 91 N. E. 148 (1910); Rott v. Steffens, 229 Mich. 241, 201 N. W. 227 (1924); Merrill v. Dearing, 32 Minn. 479, 21 N. W. 721 (1884); Reid v. Federal Land Bank, 166 Miss. 392, 148 So. 392 (1933); Pace v. Wight, 25 N. M. 276, 181 Pac. 430 (1919); Dikeman v. Dikeman, 11 Paige 484 (N. Y. 1845); Post v. Cowan, 236 App. Div. 26, 258 N. Y. Supp. 405 (2d Dept. 1932); Dallas County v. Rugel, 36 S. W. (2d) 188 (Tex. Comm. App. 1931); Milkint v. McNeeley, 169 S. E. 790 (W. Va. 1933).

The purchaser taking by assignment from the state obtains, however, no greater right than that possessed by the state. Extension of time before assignment is valid. Hooker v. Burr, 194 U. S. 415 (1904); Walker v. Ferguson, 176 Ark. 625, 3 S. W. (2d) 694 (1928).

the precedent of the *Blaisdell* case.[66] And enforcement of statutes[67] in favor of delinquent taxpayers whose property has been purchased by state or local governments is perhaps discriminatory as against those whose lands have been bought by individuals.[68] In jurisdictions where organic law prohibits the release, diminution or postponement of "any indebtedness, liability or obligation" owed to the state or its subdivisions,[69] even greater obstacles are encountered.[70]

Such objections may of course be met. These statutes, although they may inure to the advantage of persons not properly entitled to their benefits,[71] apparently afford the most expedient means by which land now worth less than the accrued tax obligations can be returned to the rolls.[72] Postponement of tax sales, release of the tax lien upon payment of the principal of the tax, and reinstatement of delinquent lands as producers of revenue for the taxing district may, by preventing accumulation of property in the hands of government officials, ultimately result in a more uniform tax burden and thereby benefit the taxpayers against whom the statutes appear to discriminate[73] as well as the general creditors of the municipality.[74] Like considera-

66. Home Building & Loan Association v. Blaisdell, 54 Sup. Ct. 231 (1934); *cf.* State v. Kline, 249 N. W. 118 (N. D. 1933). But *cf.* Roth v. Waterfield, 29 P. (2d) 24 (Okla. 1934).

67. Note 54, *supra.*

68. Kain v. Fischel, *supra* note 61. *Cf.* note 63, *supra.*

69. An example of general prohibition against legislation of this kind is ALA. CONST. § 100 (legislature cannot release, diminish, or postpone any obligation owed the state, county, or municipality, except that doubtful claims may be compromised). See also: ARK. CONST. art. V, § 33 (obligation owed state); COLO. CONST. art. V, § 38; ILL. CONST. art. IX, § 6; LA. CONST. art. IV, § 13; MISS. CONST. § 100; MO. CONST. art. IV, § 51; NEB. CONST. art. VIII, § 4; N. M. CONST. art. IV, § 32; OKLA. CONST. art V, § 53; S. D. CONST. art. III, § 24; TEX. CONST. art. III, § 55, art. VIII § 10 (except after great public calamity); WYO. CONST. art. III, § 40.

Many state constitutions forbid the passage of *local* or *special* laws remitting or decreasing obligations held by governmental units, e.g.: NEV. CONST. § 71; W. VA. CONST. art. VI, § 39; WASH. CONST. art. IV, § 31. These provisions do not prevent "classification" [State v. Lawler, 53 N. D. 278, 205 N. W. 880 (1925); *cf.* Smith v. Kansas City, 125 Kan. 88, 262 Pac. 1032 (1928)], and have no application to general legislation remitting penalties. State v. Lawler, *supra.* But *cf.* State v. Consolidated Virginia Mining Co., 16 Nev. 432 (1882) (statute remitting penalties on taxes accruing prior to a certain year invalid as special law).

70. Graham Paper Co. v. Gehner, 59 S. W. (2d) 49 (Mo. 1933); Sanderson v. Bateman; Kain v. Fischl; State v. Montoya, all *supra* note 61; State v. Pioneer Oil & Refining Co., 292 S. W. 869 (Tex. Comm. App. 1927). See Yellowstone Packing & Provision Co. v. Hays, 83 Mont. 1, 11, 268 Pac. 555, 556 (1928); McGruder's Heirs v. State, 68 S. W. (2d) 519, 520 (Tex. Civ. App. 1934).

71. That is, those who could well afford to pay.

72. Unless lands can be sold to outsiders and the liens released, at a price less than accrued taxes. See p. 932, *supra.*

73. See Remer v. Erskine, 178 Minn. 404, 407, 227 N. W. 209, 210 (1929).

74. *Cf.* Ranger Realty Co. v. Miller; Ledegar v. Bockoven, both *supra* note 42. It is doubtful, however, whether lien holders or special assessment bondholders can secure any benefit from such action. *Cf.* Howard v. State, 226 Ala. 215, 146 So. 414 (1933); Straus v. Ketchen, 28 P. (2) 824 (Idaho 1933) (payment of special assessments with bonds of district impairs obligation of contract with a limited-obligation bondholder).

tions have persuaded most courts that such enactments are constitutional. Release of penalties usually takes place automatically when laws imposing them are repealed[75] or amended.[76] And penalties, not being part of the tax,[77] are not an "indebtedness, liability, or obligation" owing to the state or municipality.[78] Interest, which is certainly a part of any "obligation" to a private creditor has, where statutes provide for reduction of interest on past due taxes, been held to be actually a "penalty" and subject to remission,[79] since taxes are not debts. Compromise or remission of the principal of taxes,[80] and postponement of enforcement of the obligation by moratoria on tax sales,[81] have been upheld where applicable only after the period of redemption has expired and the land has presumably depreciated in value. Application of the statutes only to property subject to liens held by governmental units, and similar limited application of statutes extending redemption periods, can be supported as reasonable classification consonant with the requirement of equal protection of the laws.[82] Some decisions have likened enactments releasing penalties or long past due taxes to statutes of limitation, terminating the power of government officials to sue and recover.[83] Others have supported the legislation frankly as an emergency measure.[84]

75. McKittrick v. Baer, 63 S. W. (2d) 64 (Mo. 1933); Hamilton v. Lawrence, 109 Pa. Super. 344, 167 Atl. 509 (1933); Note (1932) 77 A. L. R. 1034.

76. Henry v. McKay, 166 Wash. 526, 3 P. (2d) 145 (1931) (right to penalty must exist at time of judgment).

77. Crutcher v. Koeln, 61 S. W. (2d) 750 (Mo. 1933); State v. Mayo, 15 N. D. 327, 108 N. W. 36 (1906); State v. Coos County, 115 Ore. 300, 237 Pac. 678 (1925) (remission therefore not violative of uniformity).

78. Crutcher v. Koeln, *supra* note 77; McKittrick v. Baer, *supra* note 75; Jones v. Williams, 121 Tex. 94, 45 S. W. (2d) 130 (1931). *Contra*: Sanderson v. Bateman, *supra* note 61; *cf.* State v. Pioneer Oil & Refining Co., *supra* note 70.

79. Crutcher v. Koeln; State v. Coos County, both *supra* note 77; Jones v. Williams, *supra* note 78. But *cf.* Miller v. Lakewood Housing Co., 125 Ohio St. 152, 180 N. E. 700 (1932); State v. Lyons, 183 Wis. 107, 197 N. W. 578 (1924).

80. St. Lucie Estates v. Ashley, 105 Fla. 534, 141 So. 738 (1932); Lincoln Mortgage & Trust Co. v. Davis, 76 Kan. 639, 92 Pac. 707 (1907); *cf.* State v. State Investment Co., 30 N. M. 491, 239 Pac. 741 (1925). But *cf.* Yellowstone Packing & Provision Co. v. Hayes, *supra* note 70.

81. Dowling v. Butts, *supra* note 42.

82. *Cf.* Walker v. Ferguson, *supra* note 65.

83. Beecher v. Webster County, 50 Iowa 538 (1879); *cf.* S. L. Collins Co. v. Perrine, 188 Iowa 295, 176 N. W. 303 (1920); Lewis v. Tipton, 29 N. M. 269, 222 Pac. 661 (1924). *Contra*: State v. Montoya, *supra* note 61 (not a statute of limitations because state not allowed any time in which to collect old taxes before collection barred).

84. Sewer Improvement District No. 1 of Wynne County v. Delinquent Lands, 68 S. W. (2d) 80 (Ark. 1934); *cf.* Thompson v. Stack, 261 Mich. 624, 247 N. W. 360 (1933) (statute postponing tax sales impairs contract between cities and note holders, but mandamus to compel publication of delinquent lands, being discretionary, denied because of emergency). But see Jones v. Williams, *supra* note 78, at 99, 45 S. W. (2d) at 131 (statute releasing penalty and interest held constitutional, though depression is not "public calamity" contemplated by constitution).

These decisions are justified where the primary purpose of the legislation is to return property to the rolls, but where the purpose is only to release penalties indiscriminately, considerations of policy scarcely warrant strained construction of constitutional prohibitions.[85]

Far more important in terms of results than any inducements offered taxpayers for payment of delinquent taxes, are the measures taken to correct the inefficiency and laxity in the levy and collection of local taxes. A number of reforms of collection machinery have been effected during the depression. Delinquent taxes may now be collected in some jurisdictions by summary sale of property;[86] if notice of the sale is given, the taxpayer is not deprived of his property without due process of law.[87] Strangely enough, no state legislature made provision for applying rents and profits from delinquent property to the payment of taxes[88] until 1921, when a Tennessee statute[89] authorized the appointment of receivers in pending tax suits. The Skarda Act[90] in Illinois and the Stout Act[91] in New Jersey now afford even more expeditious relief, authorizing the appointment of receivers to collect income on property more than six months delinquent, regardless of whether suit has been started. The number of large hotels, apartment houses and office buildings now to be found on delinquency lists makes these provisions highly significant. Chicago's collections are reported[92] as much improved since the passage of the Skarda Act, and tax receiverships are said to have doubled Jersey City's receipts.[93] Laxity in the collection of local taxes has also received attention. Recent legislation in Oklahoma, Tennessee, Texas, Virginia, and West Virginia provides that upon failure of local officials to levy

85. See Betters, *Bolstering Municipal Credit* (1933) 22 NAT. MUN. REV. 268; *Recommendations of the Conference on Municipal Finance* (1933) 22 *id.* 401.

86. Sale of personalty by summary distress warrant is generally authorized; such provisions are new only to a few states. E.g., Fla. Laws (Ex. Sess.) 1929, c. 14491, §§ 23, 24 (distress); *cf.* WIS. STAT. (1931) §§ 74.02, 74.10 (seizure of mortgaged chattels and sale of taxpayer's interest); City of Tarpon Springs v. Chrysostomides, 146 So. 845 (Fla. 1933) (charter provision for summary sale of personalty).

Similar process is allowed for real estate. E.g., Ariz. Laws 1929, c. 46 (summary process); MO. REV. STAT. (1929) §§ 9952 a-c, as re-enacted Mo. Laws 1933, S. B. 94, p. 425 (suit not necessary); N. M. Laws 1933, c. 171 (sale of property after notice).

87. Merchant's Trust Co. v. Wright, 161 Cal. 149, 118 Pac. 517 (1911); Simpson v. Warren, 106 Fla. 688, 143 So. 602 (1932).

88. Perhaps the delay in adoption of such procedure was a result of the expectation that delinquent property would always be sold promptly, or because of the non-existence of rents and profits from most delinquent property.

89. TENN. CODE (1932) § 1602; State v. Collier, 165 Tenn. 163, 53 S. W. (2d) 982 (1932); *cf.* R. I. Pub. Laws 1931-1932, c. 1919, § 19.

90. ILL. REV. STAT. (Smith-Hurd, 1933) c. 120, § 238a (on own application, county auditor may be appointed receiver); *cf.* Iowa Acts 1933, c. 142 (drainage district owning tax certificates on property on which taxes subsequent to certificates are delinquent, may have receiver to manage the property).

91. N. J. STAT. SERV. (1934) § 208-444a (109).

92. (1934) 23 NAT. MUN. REV. 130.

93. *Id.* at 39.

taxes to meet bond charges,[94] or to institute tax suits,[95] or to collect state taxes,[96] or upon mere failure to discharge any duties required,[97] the state auditor or department of taxation may appoint its own officers to act. Home rule guaranties are not violated by such statutes, since the power of taxation always rests in the legislature, and collection of taxes, especially of state taxes, is clearly of more than local concern.[98]

But campaigns organized by creditors' and taxpayers' committees have proved the most efficient means for collecting back taxes. The Detroit banks in 1932 inaugurated with remarkable success a system of clubs to facilitate payment of overdue taxes in small monthly instalments. In Trenton, New Jersey, citizens cooperated with officials on a "Pay Your Taxes" campaign. Instalment payments were permitted; not only were letters mailed to delinquents, but the names of those who did not respond were published; and city employees were threatened with deduction of taxes from their salaries. Over a million dollars more was collected in one three-month period than had been received during the same period in the preceding year.[99] In Newark, New Jersey, a house-to-house canvass improved 1933 collections 70 per cent over those of 1932, and secured pledges of payment of delinquent taxes from 16,700 property owners.[100] In Columbus, Ohio, delinquents were notified by mail or telephone that their taxes were past due, and if they could not pay at once in full they were encouraged to fund a part;[101] more than 2,000 persons signed funding agreements, and payment of current taxes was greatly accelerated.[102] The success of these campaigns amply demonstrates that in the last analysis collection of delinquent taxes is a political rather than a legal problem.

*Collection of Current Taxes.* Traditionally, current property taxes are payable in a lump sum in the fall of the year, and in the absence of statute the tax collector is under no duty to accept part payment.[103] There are no constitutional objections, however, to a legislative authorization of such pay-

94. OKLA. STAT. (1931) § 5939 (municipalities or school districts).

95. TENN. CODE (1932) § 1598 (counties; state officials also to sue county officers for statutory penalties).

96. VA. TAX CODE (Michie, 1930); in certain counties the state official also collects local taxes. VA. TAX CODE (Michie, Supp. 1932) § 366 authorizes the governor to suspend any county or city treasurer who is remiss in collecting taxes, and to appoint his successor.

97. Texas Laws 1931, c. 229 (counties); W. Va. Acts (Ex. Sess.) 1932, c. 4 (supervision of assessment and enforcement of collection; may also enforce penalties against lax local officials, including removal).

98. *Cf.* Zoercher v. Agler, 202 Ind. 214, 172 N. E. 186 (1930).

99. (1934) 23 NAT. MUN. REV. 40.

100. (1933) 22 NAT. MUN. REV. 573.

101. See Ohio Laws 1933, S. B. 42, p. 161.

102. (1934) 23 NAT. MUN. REV. 129. For a description of the similar campaign in Dayton, Ohio, see (1933) 22 *id.* at 259. Stimulus was given these campaigns by the National Municipal League's nation-wide broadcasts on city problems.

103. Julien v. Ainsworth, 27 Kan. 446 (1882); Bridges v. Hurlburt, 91 Ore. 262, 178 Pac. 793 (1919). *Contra*: Howell v. Lamberson, 149 Ark. 183, 231 S. W. 872 (1921).

ments.[104] Accordingly, many of the state legislatures have in the last two years enacted provisions enabling the taxpayer to pay his current tax obligations in a number of instalments.[105] Other statutes seek to induce promptness in the payment of current taxes by allowing discounts or interest when payment is made in advance of the due date.[106] Any criticism that such a discount results in inequality of burden may be met on the ground that "the inequality of result comes from the election of certain taxpayers to avail themselves of privileges offered to all."[107] Since the discount only gives taxpayers who pay in advance the same enjoyment of their money that is had by those paying on the due date, no inequality in fact exists.[108] Inducements more coercive in nature have also been devised. A few states refuse to register motor vehicles until certain current taxes have been paid;[109] other jurisdictions now permit municipalities to withhold payment of their own obligations to taxpayers until the latter have met their tax bills;[110] while incarceration of delinquents is authorized in Massachusetts and Vermont.[111] In some states, on the other hand, legislative leniency toward the taxpayer has led to an impairment rather than to an improvement in the collection of current taxes. A number of statutes have been enacted reducing penalties for

104. Spexarth v. Sherman, 93 Ore. 254, 183 Pac. 23 (1919).

105. Ark. Acts (Ex. Sess.) 1933, no. 16, p. 61; COLO. COMP. LAWS (1921) c. 173, § 9194; Del. Laws 1933, c. 77; Fla. Sp. Acts 1933, c. 16394; Ind. Acts (Ex. Sess.) 1932, c. 30; Kan. Acts. 1933, c. 310; Md. Acts 1933, c. 4; Minn. Laws 1933, c. 121; Mo. Acts 1933, p. 453. Mont. Laws 1933, c. 158; Mo. Laws 1933, c. 134; Nev. Laws 1933, c. 99; N. J. STAT. SERV. (1933) § 208-66d (602); N. Y. Laws 1933, cc. 174, 463, 725, 832; N. D. Laws 1933, c. 259; Okla. Laws 1933, c. 86; Ore. Laws 1933, c. 326; R. I. Pub. Laws 1931-32, c. 1933; S. C. CODE (Michie, 1932) § 3155; Vt. Laws 1933, no. 21, p. 21, no. 22, p. 23, no. 23, p. 23; W. Va. Laws (Ex. Sess.) 1932, c. 12, § 7; Wis. Laws 1933, c. 163.

106. Kan. Acts 1933, c. 310, allows a discount of 2% if taxes are paid in full on or before the date on which the first instalment is due. Similar statutes are found in: Ill. Laws 1933, p. 905; Ky. REV. STAT. (Carroll, Supp. 1933) § 4148; Me. Laws 1933, c. 202; Md. Acts 1933, c. 338; Mass. Laws 1933, p. 453; N. J. STAT. SERV. (1932) § 208-66d (615); N. Y. Laws 1933, c. 832; Ore. Laws 1933, c. 326; S. C. Acts 1932, no. 868, p. 1492; Utah Laws 1933, c. 61; Vt. Laws 1933, no. 18, p. 19; WASH. REV. STAT. (Remington, 1932) § 11244; W. Va. Acts (Ex. Sess.) 1932, c. 12, § 6.

107. Merchant's Bank v. Pennsylvania, 167 U. S. 461, 464 (1897). Accord: Board of Education v. Sea, 167 Ky. 772, 181 S. W. 670 (1916); Buchanan v. West Kentucky Coal Co., 218 Ky. 259, 291 S. W. 32 (1927); Norfolk Southern Rr. Co. v. Lacey, 187 N. C. 615, 122 S. E. 763 (1924).

108. The discount may also be upheld as a reasonable classification. Keaton v. Lackawanna County, 292 Pa. 269, 141 Atl. 269 (1928).

109. E.g., S. D. Laws 1931, c. 181 (personal and poll taxes must be paid); Vt. Laws 1933, no. 90, p. 117 (flood and poll taxes must be paid); *cf.* MD. CODE (Bagby, Supp. 1929) art. 56, §§ 183, 184, 184a (delinquent motor vehicle taxes must be paid).

110. E.g., Idaho Laws 1933, c. 43 (no warrants to be issued to delinquent taxpayers); Neb. Laws 1933, c. 126 (delinquent personal taxes deductible from claims presented to municipal disbursing officer).

111. MASS. GEN. LAWS (1932) c. 60, § 29; VT. PUB. LAWS (Rev. 1933) § 715. The threat of imprisonment is ordinarily sufficient. (1933) 22 NAT. MUN. REV. 408.

delinquency,[112] and other legislation extends the redemption period on future tax sales.[113] In Oregon, although a discount of 2 per cent is allowed if taxes are paid three months before due,[114] the former penalty of 2 per cent for failure to pay by a given date has been repealed and the interest rate reduced from one per cent a month to two-thirds of one per cent.[115] Similar leniency with respect to tax sales prevents foreclosure of a tax lien for three years following delinquency.[116] It is reported that because of these provisions Oregon firms transacting business elsewhere meet their other taxes but default on those levied in Oregon.[117]

The majority of the changes in collection procedures have, however, been directed toward stimulating prompt payment of current levies. To this end the measures taken to improve the collection of delinquent taxes have contributed. Thus the procedure for summary sale of personalty and realty,[118] tax receiverships,[119] and "pay your taxes campaigns[120] have all increased current receipts. But vastly more important is the fact that tax officials have begun to pursue an aggressive collection policy, rather than to depend upon the conscience and initiative of the taxpayer. The occupation of tax collector has too often been a sedentary one. Frequently the citizen himself has had to ascertain the amount of his tax, the due date, and the official to whom it should be paid. Thus in Rochester, New York, in 1932 the citizen desirous of obtaining his tax bill had either to go to the treasurer's office and try to discover the proper clerk; or he could obtain a "tax bill request blank," and mail it with a stamped, self-addressed envelope to the treasurer. The city made no effort to collect delinquent items for a year

112. Cal. Laws 1933, c. 12; Colo. Laws 1933, c. 183; Conn. Acts 1933, c. 63; Ill. Laws 1933, p. 930; Iowa Acts 1933, c. 132; Ky. Acts 1932, c. 142; Me. Laws 1933, c. 206; Minn. Laws 1933, cc. 121, 379; Mo. Acts 1933, p. 394; Neb. Laws 1933, c. 134; Nev. Laws 1933, c. 99; N. D. Laws 1933, c. 257; Okla. Laws 1933, c. 86; Va. Laws (Ex. Sess.) 1933, c. 33; Wash. Laws 1933, c. 33; Wis. Laws 1933, c. 244; Wyo. Laws 1933, c. 72.

113. A representative statute is Kan. Laws 1933, c. 312, § 2, increasing the period of redemption on future tax sales from three years to four years. See also: Ala. Acts (Ex. Sess.) 1933, no. 77, p. 74, no. 141, p. 130; Idaho Laws 1933, c. 88; Ill. Laws 1933, p. 923; Ky. Acts 1932, c. 142; Nev. Laws 1933, c. 99; N. D. Laws 1933, c. 262; S. D. Laws 1933, c. 198; Wis. Laws 1933, c. 244.

114. Ore. Laws 1933, c. 326.

115. ORE. CODE (1930) § 69-720, Ore. Laws 1931, c. 224. Moreover, penalties and interest on unpaid taxes of 1930 and prior years have recently been cancelled. Ore. Laws 1933, c. 462.

116. ORE. CODE (1930) § 69-803. By *id.* § 69-820 a decree and sale may follow sixty days later.

117. See (1934) 23 NAT. MUN. REV. 39. Compare Va. Laws (Ex. Sess.) 1933, c. 33 (5% penalty for non-payment on due date; tax sale after only one year delinquency). See Simpson, *supra* note 8, at 152; Russell v. County Board of Education, 247 Ky. 703, 57 S. W. (2d) 681 (1933).

118. See note 86, *supra.*

119. See notes 89 to 93, *supra.* State collection of local taxes also aids current revenue receipts. See notes 94 to 97, *supra.*

120. See notes 99 to 102, *supra.*

after the due date.[121] In New York City the LaGuardia administration found that $28,750,000 of special assessment levies, some as old as 1926, had never been billed. To correct such conditions many cities have recently initiated the practice of billing all taxes before the due date, and immediately investigating instances of delinquency. In Providence, Rhode Island, a city noted for its excellent financial condition, uniformed police deliver notices requesting delinquent taxpayers to appear at the city hall to make payments;[122] and sales for taxes due in October are instituted the following June.[123] Prompt collection of taxes is probably assured more by these measures than by numerous statutory provisions which local collectors may disregard. Thus in Wisconsin if taxes are unpaid the collector must call on the taxpayer at least once if possible; [124] he may seize any personal property and sell it summarily, or he may arrest the delinquent, hail him before the justice of the peace and obtain a judgment against him. And liens on his real estate, enforced by county officials, may be fortified by execution or garnishment on any of the delinquent's property.[125] But in spite of this excellent procedure, collections in some Wisconsin cities have been no higher than in the country generally.[126] The local officials must ultimately bear the largest responsibility for collection of current taxes.[127]

*New Sources of Revenue.* The breakdown of the property tax has forced municipalities of all classes to seek the aid of state legislatures in developing new sources of revenue. Even home rule cities must have express authorization for the imposition of a new tax,[128] although the exception that taxes may be imposed in aid of some police or other regulatory power conferred by statute has been extended to include license fees on the sale of such commodities as near

121. Weller, *Thoughts on Tax Delinquency* (1932) 21 NAT. MUN. REV. 215.

122. (1933) 22 NAT. MUN. REV. 533.

123. "Prompt sale of property for taxes in Providence keeps collections high." (1933) 22 NAT. MUN. REV. 408.

124. WIS. REV. STAT. (1931) § 74.02.

125. Stout, *Enforcement of Personal and Real Property Taxes in Wisconsin* (1932) 16 MARQUETTE L. REV. 83.

126. Percentage delinquency, end of fiscal year:

| | 1930 | 1931 | 1932 | 1933 |
|---|---|---|---|---|
| Madison | 8.1 | 16.4 | 28.0 | 47.0 |
| Milwaukee | 29.3 | 35.6 | 48.3 | 66.0 |
| Racine | 16.7 | 33.7 | 38.0 | .... |
| *Cf.* Av. of Percentages for 145 Cities in U.S. | 12.9 | 15.8 | 22.1 | 26.3 |

Figures for Milwaukee and Racine are not entirely comparable because of tax strikes in the former and collection delays in both. See Bird, *supra* note 8, at 111 and 113.

127. For other recommended practices, see Chatters, *Painless Extraction of Tax Dollars* (1933) 22 NAT. MUN. REV. 9.

128. Vance v. City of Little Rock, 30 Ark. 435 (1875); International Shoe Co. v. Chapman, 311 Mo. 1, 276 S. W. 32 (1925); Siemens v. Shreeve, 317 Mo. 736, 296 S. W. 415 (1927).

beer,[129] cigarettes[130] and gasoline.[131] The forty-seven legislatures that met in 1933[132] empowered municipalities to tax most of the sources already taxed by the state and federal governments;[133] license, occupation, admissions and other taxes, and higher charges for municipal services, were authorized.[134] Many new taxes, hurriedly enacted, have brought little revenue; others have aroused threats of retaliation or public opposition and consequently have not been enforced. Maryland imposed a four cent tax upon every gallon of gasoline used by interstate buses within the state,[135] but apparently has made no attempt to collect it because of threats of retaliation by other states.[136] New York City, acting under legislation authorizing it to levy any tax which the state could impose,[137] attempted a registration fee for out-of-town cars and a tax on stock transfers; public opposition, and prospective inability to enforce them, forced abandonment of these taxes. In addition to resorting to new objects of taxation, many cities have utilized their municipally owned utilities as an important source of revenue. In some jurisdictions, state commissions, empowered to regulate the rates of the cities' utilities as well as those of privately owned companies, have limited the cities to a return either sufficient only to pay actual costs[138] or equal only to that allowed utilities privately owned.[139] But where neither commissions nor statutes impose restrictions, there appear to be no limits upon the power of municipalities to divert profits from their own utilities, and thereby to lower the general tax level.[140] Several legislatures have in recent years restricted such diversions.[141] But eighty-four small towns are said to be supporting themselves entirely with revenues from their own utility plants.[142]

State imposition and collection of indirect taxes to be shared with local governments,[143] necessitated by the difficulties inherent in local administration of

129. Levitt v. City of Cleveland, 40 Ohio App. 405, 178 N. E. 593 (1931).

130. *Ex parte* Asotsky, 319 Mo. 810, 5 S. W. (2d) 22 (1928).

131. Automobile Gasoline Co. v. City of St. Louis, 326 Mo. 435, 32 S. W. (2d) 281 (1930).

132. Manning, *State Tax Legislation, 1933* (1934) 12 TAX MAG. 63.

133. See Legis. (1934) 47 HARV. L. REV. 503, 509.

134. *Ibid.;* Manning, *supra* note 132; AMERICAN MUNICIPAL ASSOCIATION, LICENSE TAX ORDINANCES (1933).

135. Md. Laws 1933, c. 593.

136. Manning, *supra* note 132, at 64, n. 14.

137. N. Y. Laws 1933, c. 815.

138. Matter of Niagara, Rockport & Ontario Power Co. v. Prendergast, 229 App. Div. 295, 241 N. Y. Supp. 162 (3d Dep't 1930).

139. City of Loganport v. Public Service Commission, 202 Ind. 523, 177 N. E. 249 (1931); *Re* Garden Electric Light & Water Co., P. U. R. 1920D, 821 (Mont. Pub. Serv. Comm.); Comment (1931) 41 YALE L. J. 116, 118.

140. Perrin v. Bonaparte, 140 Okla. 165, 282 Pac. 332 (1929); Legis. (1933) 33 COL. L. REV. 338.

141. E.g., Iowa Acts 1931, c. 160, 161 (only after current expenses and sinking fund charges are paid); N. M. COMP. STAT. ANN. (1929) § 90-2606 (surplus); Ore. Laws 1931, c. 275 (after adequate provision is made for expenses and interest charges).

142. (1933) 15 THE ARBITRATOR (No. 2) at 3.

143. Only four states—Delaware, Rhode Island, Utah and West Virginia—returned no

such taxes,[144] in 1928 brought over $600,000,000, or more than 12 per cent of their total revenues, to the local governments.[145] Since that year many new indirect taxes have been adopted by the states,[146] frequently with the express purpose of aiding local units. The California legislature, authorized by constitutional amendment[147] to allocate state funds to meet deficits resulting from state restriction of local ad valorem taxes, and forbidden to raise more than 25 per cent of its own revenue through the general property tax, has resorted to sales[148] and liquor [149] taxes. Maryland, with a new tax on horse racing,[150] higher registration fees for trucks,[151] and chain store taxes,[152] has relieved counties of debt service for roads and schools, making possible thereby a 50 per cent reduction in county tax levies.[153] Florida has apportioned its race track tax revenues among counties and school boards;[154] Massachusetts distributes proceeds from its dividend tax to municipalities;[155] and South Dakota[156] and Texas[157] have adopted similar measures. These enactments have probably more than doubled the percentage of total revenues received by local governments from state taxes.[158]

Yet notwithstanding these various means of increasing revenue, it has been extraordinary grants in aid which have provided municipalities with the greatest amount of needed funds. Aid was first given by the states[159] and

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indirect taxes to local units in 1932. See REPORT, *op. cit. supra* note 4 (Memo. 10); HUTCHINSON, STATE-ADMINISTERED LOCALLY-SHARED TAXES (1931); Kendrick, *State Collection and Division of Taxes* (1931) 39 J. POL. ECON. 25.

144. Collection of indirect taxes requires a large staff; and variations in these taxes between communities would have an unfortunate effect upon location of capital and industries. REPORT, *op. cit. supra* note 4 (Memo. 10), at 15.

145. *Id.* at 17. Subventions are included.

146. Legis. (1934) 47 HARV. L. REV. 503; *id.* at 860; Manning, *supra* note 132.

147. Cal. Laws 1933, c. 63.

148. Cal. Laws 1933, S. B. 1211.

149. Cal. Laws 1933, cc. 51, 178.

150. Md. Laws 1933, c. 324.

151. Md. Laws 1933, c. 281.

152. Md. Laws 1933, c. 542.

153. Ritchie, *The Crisis in Government Economy* (1933) 22 NAT. MUN. REV. 323, 328.

154. Fla. Laws 1933, cc. 16116-16141, 16173.

155. Mass. Laws 1933, c. 307.

156. S. D. Laws 1933, c. 185 (55% of gross income tax proceeds for schools, property tax to be reduced by amount thus made available).

157. Tex. Laws (3d Sess.) 1932, c. 13, § 7h.

158. *Cf.* CLARK, THE INTERNAL DEBT OF THE UNITED STATES (1933) 277, indicating general increases by 1932. In some states, however, new sources of taxes have not been productive. New Mexico, for example, with a 20 mill blanket tax limit on general property taxes, note 29, *supra,* passed oil severance, liquor, and income tax measures in 1933. Manning, *supra* note 132. But instead of an expected income of $5,000,000, net receipts on all three taxes were little more than $20,000 the first year. The oil severance tax has so far yielded no revenue whatever. Albuquerque (N. M.) Morning Journal, April 8, 1934.

159. Thus in Ohio a state relief fund, derived from the gasoline tax returns, was established to aid municipalities. Ohio Laws 1933, S. B. 61, p. 26, H. B. 337, p. 61. See

the R.F.C.;[160] more recently, the N. I. R. A.'s authorization of outlays for public works projects of states and municipalities,[161] with outright grants of 30 per cent of the cost of labor and materials, have provided vital relief. Moreover, C. W. A. and P. W. A. wage payments have doubtless assisted taxpayers; and the Home Owners' Loan Corporation, with a fund of $2,200,000,000,[162] a large proportion of which may be advanced in cash to home owners for payment of taxes,[163] should effect an appreciable increase in tax collections.[164]

### B. Reduction of Expenses

Reduction of salaries, perhaps the most effective method of retrenchment in municipal expenditures, is ordinarily distasteful to political interests; but it has been compelled in some instances by banks and other creditors.[1] In Fall River, Massachusetts, for example, a board of finance established after the city's default and given plenary power over the budget, reduced teachers' salaries by 20 per cent.[2] The pressure brought to bear by New York City's creditors has, as is well known, effected marked economies of this sort.[3] But the power of municipalities to adjust expenses to depression revenues through salary reductions is often limited.[4] Although the tax levying body ordinarily has power to reduce salaries, the contracts clause of the Constitution pre-

also Ill. Laws (1st Ex. Sess.) 1933, S. B. 5 (relief bond issue, to be paid from proceeds of gasoline tax); R. I. Laws 1933, H. B. 569 (bond issue).

160. In 1932, $300,000,000 was made available to municipalities as a "loan" at 3% interest. P. L. No. 302, 72d Cong., 2d. Sess. (1932) § 1. In 1933 the R. F. C. was empowered to grant $500,000,000 to the states for relief, appropriations therefrom to be made by the various governors. P. L. No. 15, 73d Cong., 1st Sess. (1933). By Dec. 31, 1933, over $324,000,000 had been advanced. For a summary of R. F. C. loans and grants to municipalities, see (1934) 138 Comm. and Fin. Chron. 2447.

161. $400,000,000 is to be granted to the states for federal aid highways, and $2,000,000,000 is to be spent for public works projects of state and municipal governments. P. L. No. 67, 73d Cong., 1st Sess. (1933) § 203 (a) 2.

162. P. L. No. 43, 73d Cong., 1st Sess. (1933) § 4.

163. See Home Owners' Loan Corp., *Legal Bull.* No. 1, U. S. Law Week, Oct. 3, 1933, at 72, Oct. 17, 1933, at 101, Oct. 24, 1933, at 116. *Cf.* Wyo. Laws 1933, c. 102 (state protection for Farm Loan mortgagees by advancing them funds for payment of taxes and insurance).

164. It is estimated that $220,000,000 will be applied directly to the payment of delinquent taxes. Indirect results will be even more important. Greider, *Effect of Home Owners' Loan Act Upon Tax Delinquency* (1933) 22 Nat. Mun. Rev. 389.

1. See Beyer, *Financial Dictators Replace Political Bosses* (1933) 22 Nat. Mun. Rev. 162.

2. See Broadhurst v. City of Fall River, 278 Mass. 167, 179 N. E. 586 (1932); Paquette v. City of Fall River, 278 Mass. 172, 179 N. E. 588 (1932).

3. *Cf.* N. Y. Laws 1934, c. 178; N. Y. Times, April 11, 1934, at 1, 2; *cf. id.*, April 5, 1934, at 1.

4. Richardson v. Philadelphia, 312 Pa. 173, 167 Atl. 573 (1933); *cf.* Council of City of Saginaw v. Board of Estimates, 256 Mich. 624, 239 N. W. 872 (1932).

cludes alterations of contracts made with municipal employees.[5] "Public officers," however, are not protected by this constitutional provision.[6] Even more serious obstacles are mandatory salary provisions and civil service restrictions against removal of employees. These may sometimes be evaded by abolition of the offices involved,[7] and public pressure exerted on such officials to accept voluntary pay cuts may prove effective. But payment at the full statutory rate cannot be denied a "public officer" who demands it, even after he has consented to a reduction, for such waiver of part of his salary is said to be void as against public policy.[8]

Consolidation of overlapping taxing districts, though its importance as an economy measure may be exaggerated,[9] and reforms in the administration of local governments offer fertile fields for depression retrenchment.[10] The law, however, interposes many hindrances to the realization of these measures. They must, apparently, always be authorized by the legislature, and the legislature must show careful regard for the rights of creditors of the taxing district involved,[11] and for constitutional prohibitions against special legislation.[12] In California[13] and Montana[14] these are the only restrictions upon consolidations of cities and counties; but the constitutions of twenty-seven states in addition require approval of the voters for any changes in county seats, and ten states have the same requirement for alteration of county boundaries.[15] In fourteen states, moreover, existing counties can be eliminated only by constitutional amendments.[16] Provisions in many constitutions requiring the election of enumerated officials[17] likewise prevent any altera-

5. Obenchain, *Construction of Indiana's $1.50 Tax Law* (1932) 8 NOTRE DAME LAW. 1.

6. Butler v. Pennsylvania, 10 How. 402 (U. S. 1850).

7. Livingston v. MacGillivaney, 28 P. (2d) 424 (Cal. 1934). But *cf.* Shelby v. City of Pensacola, 151 So. 53 (Fla. 1933).

8. Glovey v. United States, 182 U. S. 595 (1901); Lukens v. Nye, 156 Cal. 498, 105 Pac. 593 (1909); Ohio National Bank v. Hopkins, 8 App. D. C. 146 (1896); Anez v. City of Seattle, 28 P. (2d) 1020 (Wash. 1934).

9. Duplications in administration expenses can be avoided, and more effective budgeting made possible; but consolidation cannot eliminate costs of services. Porter, *A Plague of Special Districts* (1933) 22 NAT. MUN. REV. 544.

10. Morgenthau, *Bigger and Better Governments Wanted* (1933) 22 NAT. MUN. REV. 434. See *Recommendations of the N. J. Tax Survey Commission* (1932) 21 NAT. MUN. REV. 211.

11. Landis v. Peacock, 151 So. 4 (Fla. 1933).

12. McCarthy v. Walter, 108 N. J. L. 282, 156 Atl. 772 (1931). Typical provisions are: CAL. CONST. art. IV, § 25; WASH. CONST. art. II, § 28. These provisions do not preclude "classification," however. See Smith v. Kansas City, 125 Kan. 88, 262 Pac. 1032 (1928).

13. CAL. CONST. art. XI, §§ 7, 7½, 7½a.

14. MONT. CONST. art. XVI, § 7.

15. Jones, *Constitutional Barriers to Improvement in County Government* (1932) 21 NAT. MUN. REV. 525, 529. The requirement is probably a necessary safeguard. *Id.* at 535.

16. *Ibid.*

17. Election of at least ten county officials is required in Texas. TEX. CONST. art. V, §§ 9, 18, 20, 21, 23, art. VIII, §§ 14, 16, art. XVI, § 44. Twenty-two other state constitutions have somewhat similar provisions. Jones, *supra* note 15, at 525, 526, 537.

tion in the existing forms of government,[18] unless the designated offices can be utilized in the consolidated or reorganized government.[19] During the depression, however, public insistence upon greater efficiency and economy in the administration of local governments has led to reforms despite such obstacles. Virginia has made possible the elimination of five hundred road districts,[20] and similar measures have been adopted in other states.[21] Chicago voters are to decide whether twenty-four park districts within the city should be combined.[22] Consolidation of cities and counties,[23] and of school,[24] irrigation and drainage,[25] and other[26] districts has been authorized. Even more effective aid has been afforded local governments by legislation shifting the burden of maintaining schools,[27] roads,[28] and relief[29] to the states, especially when the shift has been accompanied by an exchange of state bonds for the obligations with which the local units had financed those activities.[30] Reor-

18. *Ibid.* Compare the constitutional obstacles encountered in shifting the assessment function from local to county officials in New York. REPORT OF NEW YORK STATE COMMISSION FOR THE REVISION OF THE TAX LAWS (Memo. 3, 1932) 52.

19. When city and county bounds were made coterminous in Philadelphia the separate governments were retained. In New York City the county offices prescribed by the constitution remain as a skeleton of the county governments. Jones, *supra* note 15; REPORT, *loc. cit. supra* note 18.

20. Va. Acts 1932, c. 415, provided for state maintenance, but allowed counties to elect to continue under state aid, as before. By September, 1932, 96 out of 100 counties were operating under the state maintenance plan. (1932) 21 NAT. MUN. REV. 620.

21. E.g., N. C. Laws 1931, c. 145 (local road districts dissolved, state maintenance substituted for state aid); *cf.* Idaho Laws 1933, c. 131 (no new highway districts to be established).

22. (1934) 138 COM. AND FIN. CHRON. 1952.

23. E.g., Minn. Laws 1933, c. 273 (consolidation of counties upon petition of 25% of voters and approval by 60%); PA. CONST. AMEND. art XV, § 4 (1928) (city of Pittsburgh; voters' approval required).

24. E.g., Ga. Laws 1931, no. 156, p. 103 (proposed constitutional amendment); N. Y. EDUC. LAW (Cahill, 1930) §§ 130-134; *cf.* N. C. Laws, c. 430, § 6, p. 431; WIS. STAT. (1931) §§ 40.50-40.57; Board of Education v. Racine, 205 Wis. 489, 238 N. W. 413 (1931).

25. E.g., Fla. Laws 1933, c. 16010; ILL. REV. STAT. (Smith-Hurd, 1933) c. 42, §§ 17a-17e; WASH. REV. STAT. (Remington, 1933) §§ 4293-4297.

26. E.g., Ind. Acts 1933, c. 76 (abolishing sanitary districts, prohibiting further issuance of bonds).

27. E.g., N. C. Laws 1931, c. 430, § 1 (state assumes financial responsibility for a six-month school term, teachers becoming state employees).

28. See statutes cited notes 20 and 21, *supra;* Tex. Laws (3d Sess.) 1931, c. 13, § 1 (policy of taking over county roads declared); *cf.* Ind. Acts 1932, c. 16 (maintenance of highways transferred from townships to counties).

29. See INCREASES IN REVENUES, *supra* IA, note 159.

30. E.g., N. C. Laws 1931, c. 145; R. I. Acts 1933, c. 2011; Tex. Laws (3d Sess.) 1931, c. 13, §§ 1, 7. In some instances local indebtedness for roads and other improvements was taken over by the states without assuming the burden of maintenance. E.g., Ark. Acts (2d Ex. Sess.) 1932, no. 15 (4½% state bonds to be exchanged for road district bonds bearing 4½% to 6% interest); CAL. CONST., proposed amendment 1933 (authorizes state 4½% bonds, proceeds to be used in purchasing irrigation and reclamation district 5% to

ganizations of county and municipal governments have also been accomplished during the depression. Establishment of county manager[31] or county executive[32] forms of government has been authorized by several legislatures;[33] and a similar trend toward centralization of responsibility in city governments is apparent.[34] But the most essential, and perhaps the most effective, economies are those available through less comprehensive reforms, particularly through removal of the glaring inefficiencies in existing forms of government. Creation of budget supervising and efficiency agencies,[35] and of planning boards for public works,[36] centralization of purchasing[37] and consolidation of other related functions,[38] are typical measures. Synchronization of tax collection dates with the maturity of municipal obligations, obviating the necessity for expensive tax anticipation warrants, has been attempted in several states.[39] Avoidance of debt charges is also sought by "cash basis" laws,[40] prohibiting the issuance of any short term obligations unless funds for their payment are assured, by authorizations for taxes in excess of current needs to provide cash working funds,[41] and by the allow-

6% bonds); GA. CONST. as amended Ga. Acts 1931, no. 152, p. 97 (assumption by state of county debt).

31. E.g., Mont. Laws 1931, c. 109, Laws 1933, c. 56.

32. E.g., Va. Laws 1933, c. 368, providing alternative county manager or executive forms of government. In one county that has put the latter form into operation under this act, large savings are anticipated from reformed financial control, consolidation of functions, elimination of many offices, and centralization of responsibility. Harris, *Progress in International Municipal Research* (1933) 22 NAT. MUN. REV. 329; *cf.* (1932) 22 *id.* at 539.

33. See Atkinsen, *Principles of a Model County Government* (1933) 22 NAT. MUN. REV 469.

34. That the city manager form of government enjoys increasing favor, see (1933) 22 NAT. MUN. REV. 539; WHITE, TRENDS IN PUBLIC ADMINISTRATION (1933) 213, 218. Mo. Laws 1933, p. 284, is a typical enabling act.

35. See PRESENT ADMINISTRATIVE SUPERVISION OF GENERAL FISCAL MANAGEMENT, *infra* IIIC.

36. See Shurtleff, McAneny and Bettman, *Saving by Planning* (1933) 22 NAT. MUN. REV. 508; Allen v. Stockwell, 210 Mich. 488, 178 N. W. 27 (1920); Village of Lynbrook v. Cadoo, 252 N. Y. 308, 169 N. E. 394 (1930).

37. (1933) 22 NAT. MUN. REV. 409; WHITE, *op. cit. supra* note 34, at 218, 220.

38. WHITE, *op. cit. supra* note 34, at 221, 222; Freeman, *How American Cities Are Retrenching in Time of Depression* (1932) 21 NAT. MUN. REV. 267.

39. E.g., N. C. CODE ANN. (Michie, 1931) § 2922; see Jackson City Commission v. Hirshman, 253 Mich. 596, 235 N. W. 265 (1931).

40. E.g., Kan. Laws 1933, c. 319 (operation on cash basis to be facilitated by funding floating debt), construed in Citizens Bank of Weir v. Cherokee Township, 25 P. (2d) 1019 (Kan. 1933); Minn. Laws 1931, c. 342, Laws 1933, c. 438 (certain taxing districts to operate on cash basis, except for anticipation certificates); MONT. CODE (1921) § 5078, construed to forbid issuance of warrants in Commonwealth Public Service Co. v. City of Deer Lodge, 28 P. (2d) 472 (1934); *cf.* W. VA. CODE (1931) c. 11, art. 8, § 13 (prohibiting contracts for expenditure of funds not available for current year); but *cf.* Ohio Corrugated Culvert Co. v. Logan County Court, 171 S. E. 110 (W. Va. 1933).

41. E.g., N. C. CODE ANN. (Michie, 1931) § 1334 (65a) (counties), § 2931a (municipalities; *cf* ILL. REV. STAT. (Smith-Hurd, 1933) c. 24, § 667 (a), (b) (cities over 150,000 may

ance of discounts to secure advance payment of taxes.[42] Reforms of this type afford the most desirable means of adjusting municipal expenditures to depression revenues; the political opposition encountered by many of them[43] is indicative of their potentialities.

When the above methods of retrenchment are impossible, or when the obstinacy of officials prevents their adoption, or when, having been attempted, they do not succeed in restoring the city to solvency, drastic measures become necessary, involving serious impairment of essential governmental activities.[44] The reductions in county school budgets between 1929 and 1932, effected by increasing the size of classes, cutting salaries, shortening the school year, and even by closing schools entirely,[45] has been estimated at $400,000,000; yet school attendance increased during the same period.[46] Chicago's library is reported to have purchased no books for eighteen months.[47] Allowances for welfare[48] and recreational activities[49] have been slashed. The mayor of Cleveland has threatened to reduce the city's police and fire-fighting forces by 50 per cent, and its street lighting by 80 per cent.[50] In one Georgia county, court terms have been limited to two days, and highways are maintained, if at all, by volunteers.[51] And the mayor of a West Virginia city discharged himself and 270 municipal employees.[52] Although a lowering of standards of community welfare and government to some extent during a depression is perhaps inevitable, economies such as these should certainly be employed only as a last resort.

### C. Borrowing

Unable or unwilling to effect through increased revenues and curtailed expenditures financial adjustments necessary to avert insolvency, municipalities have had increasing recourse to their power to incur indebtedness. In the case of long term borrowing, however, there have existed in the great majority of the states since the aftermath of the panic of 1873, constitutional or statutory

issue bonds without referendum to create cash working fund), upheld in Matthews v. City of Chicago, 342 Ill. 120, 174 N. E. 35 (1930).

42. See Increases in Revenues, *supra* IA, note 106.

43. Mayor LaGuardia's experience in securing enactment of N. Y. Laws 1934, c. 178, is a conspicuous illustration. See in general, Barrows, *A Challenge to Reform* (1933) 22 Nat. Mun. Rev. 223, 225.

44. See Frank, *Constructive versus Destructive Economy* (1933) 22 Nat. Mun. Rev. 313; Holcombe, *Saving Money in State Government* (1933) 22 Nat. Mun. Rev. 317.

45. In Alabama, 85% of the elementary and secondary schools were closed in the fall of 1933. (1933) 22 Nat. Mun. Rev. 222.

46. Counts, Norton and Simon, *Reducing the School Budget* (1933) 22 Nat. Mun. Rev. 374.

47. (1933) 22 Nat. Mun. Rev. 256.

48. Boeckel, Meriam and Bane, *Reducing the Welfare Budget* (1933) 22 Nat. Mun. Rev. 410.

49. Appropriations for these activities are estimated to have been 28% lower in 1932 than in 1930. See Wallace, *Reducing the Recreation Budget* (1933) 22 Nat. Mun. Rev. 420.

50. N. Y. Herald Tribune, March 28, 1934, at 1.

51. (1933) 22 Nat. Mun. Rev. 309. See also Freeman, *supra* note 38.

52. Seasongood, *Getting Our Bearings* (1933) 22 Nat. Mun. Rev. 584, 585.

provisions[1] limiting the total permitted debt to a stated percentage of the value of taxable property, requiring electoral approval of each bond issue, prohibiting the incurrence of any debt until provision is made for its payment, or combining some or all of these restrictions.[2] Thus circumscribed in the face of pressing need for funds to meet mounting deficits incurred in their various activities,[3] cities have resorted to short term borrowing and evasion of the limitations set upon long term financing.[4]

*Short Term Borrowing.* Payment of claims in warrant and scrip, and borrowing from banks and other sources on the security of taxes levied but not collected, is generally permissible without regard to constitutional or statutory debt limitations. On the theory that taxes levied are revenues constructively in the municipality's treasury,[5] the courts reason either that securities other than negotiable bonds issued in anticipation of taxes create no "indebtedness"[6] or that anticipated taxes are deductible from the increased total of indebtedness as assets similar to cash.[7] In either case the effect has been to defeat the intended purpose of the city budgetary systems which have been instituted in many states,[8] since control of municipal borrowing by the electorate[9] or by supervisory administrative bodies[10] has been drafted in terms of

1. These provisions are collected in Legis. (1934) 47 HARV. L. REV. 688, n. 6, 689, n. 7; Legis. (1933) 18 IOWA L. REV. 269.

2. For general discussion of the problems which have arisen out of constitutional debt limitations, see SECRIST, AN ECONOMIC ANALYSIS OF THE CONSTITUTIONAL RESTRICTIONS UPON PUBLIC INDEBTEDNESS IN THE UNITED STATES (1914); WHITE, TRENDS IN PUBLIC ADMINISTRATION (1933) 49-57; PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933); 1 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §§ 198-200; 6 McQUILLIN, MUNICIPAL CORPORATIONS (2d. ed. 1928) §§ 2382, 2387-90; Stason, *State Administrative Supervision of Municipal Indebtedness* (1932) 30 MICH. L. REV. 833, 837; Note (1914) 14 COL. L. REV. 70 (power of municipality to exceed debt limits); Note (1931) 44 HARV. L. REV. 610; Legis. (1934) 47 HARV. L. REV. 688 (loans from PWA in excess of debt limits); Comment (1933) 42 YALE L. J. 762 (power of municipality to provide unemployment relief).

3. Betters, *Bolstering Municipal Credit* (1933) 22 NAT. MUN. REV. 268.

4. See Note (1932) 45 HARV. L. REV. 704; *Has the Indiana Plan Been a Success* (1932) 21 NAT. MUN. REV. 101, 103.

5. Tax revenues may even be anticipated beyond the current year, provided the taxes have been levied. See Springfield v. Edwards, 84 Ill. 626 (1877).

6. In Illinois, for instance, tax anticipation warrants are treated as assignments of tax claims, thus negativing any concept of the creation of a debt. See Harrold v. East St. Lewis, 197 Ill. App. 121, 125 (1915). The legal problems involved in the issuance of such warrants are fully discussed in Note (1932) 45 HARV. L. REV. 704.

7. Holst v. Consolidated District, 203 Iowa 288, 211 N. W. 398 (1926); Barton v. Hopkins, 14 Wash. 59, 44 Pac. 134 (1896). *Contra:* Farbo v. School District, 28 P. (2d) 455 (Mont. 1933).

8. See Kilpatrick, *State Codes for Local Budgeting* (1933) 22 NAT. MUN. REV. 179.

9. Provisions requiring electoral approval of bond issues are seldom held to apply to warrants, Simms v. Mt. Pleasant, 12 S. W. (2d) 833 (Tex. Civ. App. 1928), even though the latter resemble bonds in every respect except as to the recitals on the face. Note (1933) 45 HARV. L. REV. 704, 707, n. 31, 708, n. 32.

10. A requirement that bond issues receive the approval of a state supervisory board

mandatory approval only of bond issues.[11] In Kentucky, the constitutional prohibition against borrowing by municipalities in any given year, without the approval of two-thirds of the voters, in excess of the total revenue "provided" for that year, has been construed as limiting them only to an amount determined by the tax which the city could legally levy, not to the actual rate imposed.[12] As a consequence, the short term debt of Kentucky cities has mounted yearly.[13] Yet the fact that warrants may be funded without electoral approval[14] nullifies any effective check upon this increase through enforcement of the requirement that a deficiency of one year must be made up in the next year's tax levy.[15] Even more difficult of control is "borrowing" by manipulation of accounts. Diversion of sinking funds,[16] and payment of current expenses from surpluses and reserves[17] or even from funds belonging to counties or other local units,[18]

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does not apply to warrants. *Cf.* Chemical Bank & Trust Co. v. Oakland County, 264 Mich. 673, 251 N. W. 395 (1933). In Kentucky, it has been further held that such state bodies cannot control the discretion of local officers. Fox v. Boyle County, 245 Ky. 27, 53 S. W. (2d) 192 (1932). See PRESENT ADMINISTRATIVE SUPERVISION OF LOCAL INDEBTEDNESS, *infra* III A; EXTENT OF NECESSITY FOR EFFECTIVE ADMINISTRATIVE SUPERVISION, *infra* IV A.

11. Nor is any effective control by the taxpayer possible, for he must enter formal protest and often demonstrate either that the warrants were invalid ab initio, Chestnutt v. Yates, 177 Ark. 894, 9 S. W. (2d) 37 (1928), or that the recital of validity is false. See Note (1932) 45 HARV. L. REV. 704, 709, n. 47; *cf.* Ohio Corrugated Culvert Co. v. Logan County Court, 171 S. E. 110 (W. Va. 1933).

12. City of Providence v. Providence Electric Light Co., 122 Ky. 237, 91 S. W. 664 (1906).

13. See Dietzman, *Constitutional Limitations on Public Indebtedness* (1931) 20 Ky. L. J. 75, 80.

14. Vaughn v. City of Corbin, 217 Ky. 521, 289 S. W. 1104 (1927), construing generically a constitutional clause probably intended to refer only to floating debt incurred prior to the adoption of the constitution. See Dietzman, *supra* note 13, at 81. *Accord:* Huron v. Second Ward Bank, 86 Fed. 272 (C. C. A. 8th, 1898). *Contra:* Farbo v. School District, *supra* note 7; Glenn v. Board of Commissioners, 201 N. C. 233, 159 S. E. 439 (1931). Even if the bonds are sold to fund warrants issued illegally, an estoppel may arise. *Cf.* Chemical Bank & Trust Co. v. Oakland County, *supra* note 10.

15. McCrocklin v. Nelson County Fiscal Court, 174 Ky. 308, 192 S. W. 494 (1917); Dietzman, *supra* note 13.

16. *Cf.* Bosworth v. Anderson, 47 Idaho 697, 280 Pac. 277 (1929); (city's diversion of sinking fund to pay interest no violation of duty as collecting agent); Protest of Chicago, Rock Island & Pacific Ry. Co., 164 Okla. 114, 23 P. (2d) 158 (1933) (surplus of municipal revenues can be applied only to current year's deficit in sinking fund); (1932) 21 NAT. MUN. REV. 101 (diversion of sinking funds enables Indiana cities to levy taxes above the blanket limit, since debt charges must be met).

17. In Chicago, for example, a $60,000,000 subway construction fund built up over a period of years, was all used to pay city salaries. (1932) 21 NAT. MUN. REV. 144. Other funds were diverted to pay bond interest when tax revenues were insufficient. *Cf.* Gates v. Sweitzer, 347 Ill. 353, 179 N. E. 837 (1932) (diversion not illegal if replacement of funds is "intended").

18. The smaller towns in Milwaukee county, Wisconsin, turned over their delinquent tax rolls in place of cash on sums owing the county, while the city of Milwaukee paid its

are practices difficult of either discovery or prevention.[19] The state legislatures, far from endeavoring to correct this condition of uncontrolled municipal financing, have frequently sanctioned and encouraged it. Various prerequisites to borrowing have been waived [20] and the issuance of scrip, notes and tax warrants authorized to meet ordinary[21] as well as relief[22] expenditures. And not only has pledging of unsold bonds, illegal unless expressly unauthorized,[23] also been permitted[24] but outstanding scrip of doubtful legality[25] has been validated by subsequent legislative action.[26]

The short term borrowing which has thus been available to cities has ultimately had unfortunate repercussions. The depreciation of warrants issued by Chicago authorities in payment of public school salaries is well known.[27] Inability to renew unsecured loans, or loans secured by unrealized tax revenues, has in some cities resulted in virtual banker dictatorship over municipal budgets.[28] In other instances accumulating short term maturities which could not be funded have precipitated receiverships.[29] Legislative attempts to

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full share of county taxes. The city was then forced to pay an unfairly large proportion of county levies to cover these delinquencies. (1933) 22 NAT. MUN. REV. 345, 346; see also Gates v. Sweitzer, *supra* note 17.

19. *Cf.* Hoan, *Milwaukee Financially Sound and Content* (1932) 21 NAT. MUN. REV. 88; Lynagh, *The Surplus that Made Milwaukee Famous* (1932) 21 *id.* 152.

20. E.g., OHIO (Page, Cum. Code Supp. No. 11, 1934) p. 35, H. B. 9; R. I. Laws 1931, c. 1855.

21. Ind. Acts 1933, p. 845, c. 161; ILL. REV. STAT. (Smith-Hurd, 1933) c. 146½; Mich. Acts, 1931, No. 26; Acts 1933, Nos. 46, 214; N. H. Laws 1931, c. 126, § 2; N. Y. Laws 1932, c. 2; N. D. Laws 1933, c. 263; OHIO CODE (Page, Cum. Code Supp. No. 11, 1934) p. 35, H. B. 9; Ore. Laws 1933, c. 12; Tex. Laws 1933, p. 154, c. 76.

22. Pa. Laws (EX. Sess.) 1932, p. 13, No. 6; R. I. Laws 1931, c. 1855; S. C. Acts 1933, No. 308.

23. City of Sanford v. Chase National Bank, 44 F. (2d) 206 (S. D. N. Y. 1930), compelled the return of unsold bonds pledged by the city without statutory authorization to a local bank as collateral security on the city's certificates of indebtedness; Barde v. Funk, 24 P. (2d) 334 (Ore. 1933) (Portland charter provision for sale of bonds does not authorize hypothecation). See (1931) 20 NAT. MUN. REV. 298. *Cf.* City of Dawson v. Wilkinson, 174 Ga. 539, 163 S. E. 485 (1932) (city may not without statutory authority reissue bonds purchased by itself and held in treasury).

24. E.g., FLA. COMP. LAWS (1927) § 1552.

25. Scrip to be used as *currency* cannot be issued without express statutory authority. Thomas v. Richmond, 79 U. S. 349 (1870); Barde v. Funk, *supra* note 23 (scrip to be self-liquidated by affixing stamps).

26. E.g., ILL. REV. STAT. (Smith-Hurd, 1933) c. 146½, §§ 18, 20, 21b; Mich. Acts 1933, No. 26; N. Y. Laws 1932, c. 2. See Chemical Bank & Trust Co. v. Oakland County, *supra* note 10 (legislature has power to validate issues).

27. See (1932) 21 NAT. MUN. REV. 587.

28. Bankers have continued to lend short-time money in Philadelphia, Chicago, Detroit and New York only on condition that the financial house be put in order. Beyer, *Financial Dictators Replace Political Boss* (1933) 22 NAT. MUN. REV. 162.

29. The Fall River, Massachusetts receivership was precipitated by the accumulation of short time loans. See Fishack, *A Financial Dictatorship for Fall River* (1931) 20 NAT. MUN. REV. 201.

prevent by criminal penalties the circulation of warrants at a discount[30] seem destined to be of negligible effect; while legislation[31] requiring municipalities to receive warrants or scrip in payment of all[32] taxes, where not held unconstitutional,[33] may well prove injurious rather than remedial.[34] More effective have been the "cash basis" laws of Kansas, Minnesota and Montana,[35] and the Illinois and North Carolina provisions for "cash working funds,"[36] which, in addition to militating against further short term borrowing, have in some cases provided for the funding of the existing short term debt.[37] Although the retirement of floating indebtedness is clearly preferable to its funding, the latter expedient, often the only possible one, has at least the salutary effect of making possible the measurement and supervision of municipal debt.

*Long Term Borrowing.* The rigid limitations imposed upon long term borrowing by statutory and constitutional debt restrictions became increasingly burdensome as greater congestion in urban areas and generally rising standards of living demanded the continued expansion of municipal activities. It was thus inevitable that cities should seek means of obtaining greater amounts of borrowed funds than were allowed by the limits set in an earlier age. Advantage was soon taken of the laws by which some states permit excess borrowing for

30. Ind. Acts 1933, p. 845, c. 161, § 7, providing that the purchase of a warrant at a discount of more than 8% of face value shall be a misdemeanor, and shall subject the offender to no more than six months in jail or a fine of not over $300. N. D. Laws 1933, c. 263, § 17, prohibiting discounting of tax certificates; violators are to be deemed guilty of a felony and sentenced to the penitentiary for one year.

31. Bond, warrants or scrip are made receivable in payment of taxes by the following statutes: Ala. Acts (Sp. Sess.) 1932, p. 55, No. 47; ARK. DIG. STAT. (Crawford & Moses, 1919), §§ 1993, 2008, 10045, ARK. DIG. STAT. (Castle, Supp. 1931) § 5646(i); COLO. COMP. LAWS (Courtright, Supp. 1932), § 9072.12, Colo. Laws 1933, c. 115, § 6; Fla. Laws 1933, cc. 16048, 16251, 16252, 16254-16258, 16288; Idaho Laws 1933, cc. 183, 207, § 5, 213; Iowa Acts 1933, c. 141; KAN. REV. STAT. (1923) c. 79, § 2003; Mich. Acts 1933, No. 133; N. J. Stat. Serv. (1932 Ann.) § 192-89a(2); N. D. Laws 1933, c. 267; Ohio Laws 1933, p. 221, H. B. 94; Ore. Laws 1933, c. 324; S. C. CODE (Michie, 1932) § 7322; S. D. COMP. LAWS (1929) § 6764; Utah Laws 1923, c. 97; WASH. REV. STAT. (Remington, 1932) § 7442-1; Wis. Laws 1933, c. 199. For the Illinois legislation see Mereness v. Board of Education, 349 Ill. 291, 182 N. E. 383 (1932).

32. Warrants or scrip issued in anticipation of taxes are, of course, almost always receivable in payment of those particular taxes.

33. Such legislation has been held invalid in Howard v. State, 226 Ala. 215, 146 So. 414 (1933); McNee v. Wall, 4 F. Supp. 496 (S. D. Fla. 1933) (as to Fla. Laws 1933, cc. 16048, 16251, 16252); Straus v. Ketchen, 28 P. (2d) 824 (Idaho 1933) (as to Idaho Laws 1933, c. 183).

34. *Cf.* Mereness v. Board of Education, *supra* note 31; note 81, *infra.*

35. REDUCTION OF EXPENSES, *supra* IB, note 40.

36. *Id.* note 41.

37. See ILL. REV. STAT. (Smith-Hurd, 1933) c. 24, §§ 662(c)-662(h), c. 34, §§ 107(h)-107(i), c. 122, §§ 327(a)-327(p), providing for bond issues to fund existing short term indebtedness incurred in the form of tax anticipation warrants. These bond issues must be retired by mandatory tax levies which may exceed statutory tax limits.

"temporary loans,"[38] in case of "calamity,"[39] or for capital improvements upon approval of a certain proportion of the electorate.[40] Of greater significance have been the frequent exemptions, up to a certain percentage of the general debt limits, of bond issues for construction or acquisition of public utilities[41] and waterworks.[42] Municipalities have also found it possible to finance revenue-producing services by "special fund" bonds without doing violence to debt limitation provisions; this type of obligation is said[43] not to create municipal "indebtedness," as that term is used in the statutes and constitutions, unless the general taxing power of the municipality has been pledged to secure any deficiency in the special fund.[44] Instalment or conditional sales contracts, and leases carrying options to purchase have been made to perform a similar function.[45] And where these means have proved to be insufficient, cities have secured the establishment of new political subdivisions having the power to borrow. Thus permanent improvements have been financed by bond issues constituting in rem liabilities of special assessment districts,[46] while funds for increased general activities have been secured by the creation of more and more overlapping taxing districts, until investors in the securities of these public borrowers have no means of ascertaining the total taxation to which the property within their bounds is subject.[47]

With these devices of evasion available, long term borrowing continued undiminished until 1932,[48] the proceeds of this borrowing aiding municipalities to tide themselves over the first years of the current depression. In that year, however, there occurred a considerable decline in new issues. In many instances cities either found it impossible to market securities or were unable to secure

38. ALA. CONST. art. X, § 225.

39. MICH. COMP. LAWS (1929) § 2231.

40. See, e.g., CAL. CONST. art. XI, § 18 (allowing indebtedness exceeding revenue provided for a given year on approval of two-thirds of qualified voters); LA. CONST. art. XIV, § 14f (additional indebtedness not exceeding 10% of assessed valuation upon assent of voters). Other states whose constitutions permit additional percentage indebtedness are Arkansas, Kentucky, Missouri, Oklahoma and Utah. Legis. (1933) 18 IOWA L. REV. 269, 270, n. 5.

41. Alabama, Arizona, South Dakota, Washington. *Id.* at 269, n. 3.

42. Colorado, Georgia, Montana, North Dakota, South Dakota, Washington and Wyoming. *Ibid.*

43. See Note (1914) 14 COL. L. REV. 70, 72.

44. For a full discussion and collection of cases see Legis. (1934) 47 HARV. L. REV. 688. Even where the general taxing power is thus pledged, the municipality's obligation, contingent upon the insufficiency of the special funds, is not a "general" one requiring approval of the electorate. Anderson v. City of Fargo, 250 N. W. 794 (N. D. 1933).

45. Legis. (1933) 18 IOWA L. REV. 269.

46. A municipality is not liable for insufficiency of the fund to be raised by special assessment unless remiss in the duty of levying and collecting the assessments. Note (1931) 44 HARV. L. REV. 610. Nor do the bonds evidence an "indebtedness" of the municipality. Note (1914) 14 COL. L. REV. 70.

47. This device avoids all but blanket tax limits. SECRIST, *op. cit. supra* note 2, at 97.

48. Shanks, *Municipal Credit in the Current Depression* (1933) AM. BANKER (Dec.) 6.

the necessary approval of the electorate;[49] and in some eight states[50] blanket tax limits virtually put an end to municipal borrowing on the security of general revenues, as cities could not meet the statutory requirement that provision for taxes within those limits sufficient to pay interest charges and assure retirement at maturity be made at the time of issuance of the bonds.[51] The new demands of the depression were for a time met primarily by short term borrowing. Upon the passage of the Emergency Relief and Construction Act of 1932,[52] which among other provisions authorized loans up to $1,500,000,000 to municipalities for "self-liquidating" projects, the desirability of enabling cities to share in the fabulous sums thus offered by the federal government led some of the legislatures to waive statutory restrictions upon municipal indebtedness.[53] Owing, however, to the high interest rates imposed and to constitutional restrictions upon the pledging of general tax revenues as security, this plan for borrowing from the RFC proved to be a failure. Although the $300,000,000 appropriated for grants of direct relief under another section of the Act was fully distributed by May, 1933,[54] only forty-one loans from the remaining funds set aside had been approved through March 1, 1933.[55]

Since the public works provisions of the National Industrial Recovery Act became effective, however, cities have again been able to do a substantial part of their financing through long term securities. Approved loans by the PWA to municipalities, secured as far as required by municipal bonds,[56] totaled $15,270,781 in February of the present year and $25,399,004 in March.[57] In the case of loans for financing revenue-producing improvements, legislative stipulations that "special fund" bonds shall be payable solely out of revenues derived from the improvements and shall not constitute a municipal "indebtedness" within the meaning of the restrictions imposed, have given assurance of the effectiveness of that evasion of the limitations.[58] Where the city's proposed improvements will give rise to no additional revenues, attempted issues can scarcely be denominated "special fund" bonds and on that ground issued

49. *Ibid.*

50. INCREASES IN REVENUES, *supra* IA, at p. 931 and note 29.

51. Shanks, *supra* note 48.

52. 47 STAT. 709 (1932), 15 U. S. C. SUPP. VII, § 601 (1933).

53. Conn. Gen. Acts 1933, c. 32a, §§ 89b, 94b; N. H. Laws 1933, c. 162; N. Y. Laws 1933, c. 782; Ohio Laws 1933, S. B. 403, p. 601; R. I. Pub. Laws 1931, c. 1855, Pub. Laws 1932, c. 1919, Acts and Resolves 1933, c. 2028.

54. (1934) 138 COMM. AND FIN. CHRON. 2447.

55. See Betters, *Federal Aid for Municipalities* (1933) 22 NAT. MUN. REV. 174, 176.

56. Of these loans, 30 per cent of the cost of labor and materials is a direct grant, while the remainder is secured by 4 per cent municipal bonds. See INCREASES IN REVENUES, *supra* IA, note 161.

57. (1934) 138 COMM. AND FIN. CHRON. 2448.

58. Ala. Acts (Sp. Sess.) 1933, Nos. 46, 47, 66, 102, 107; Idaho Laws 1933, cc. 186, 187; Ind. Acts 1933, p. 561, c. 85; Iowa Acts 1933, c. 111; Me. Laws 1933, cc. 243, 251; Mo. Laws 1933, p. 363; Neb. Laws 1933, p. 561, c. 146; N. M. Laws 1933, c. 57; N. D. Laws 1933, c. 179; Ore. Laws 1933, c. 297; S. C. Acts 1933, No. 299; Utah Laws (2d Sp. Sess.) 1933, c. 22; Va. Acts (Ex. Sess.) 1933, p. 47, c. 26; W. Va. Acts (Ex. Sess.) 1933, cc. 25-26.

in excess of debt limits.[59] Other means of circumventing these restrictions have, however, been found. In North Carolina, a bond issue for water and sewer improvements has been held to be for a "necessary expense" and not subject to such limitations,[60] while a Michigan city's bond issue for unemployment relief has been declared within the exception authorizing excess loans in case of "calamity."[61] The Colorado legislature has gone so far as to authorize borrowing regardless of constitutional provisions.[62] Although of seeming futility, such a provision may be quite effective, for the courts can only prevent a sale of bonds in excess of prescribed limits which is contested in due time by a taxpayer or other party in interest.[63] A method of evasion predicated upon estoppel is also available in jurisdictions in which statistics on total debt and assessments are not recorded or in which it is held that reliance may be placed upon the findings of municipal officials with regard to such information. Where this is the case, once bonds are issued and in the hands of a purchaser for value the municipality may, in an action on them, be estopped from defending on the basis of facts admitted in the recital on their face.[64] Even in jurisdictions where, because of statutory provisions requiring publication of financial statements or of information on assessed valuations and total bonded debt,[65] no such estoppel can arise,[66] municipal authorities may fail to plead a defense on the ground that to do so would jeopardize the credit of the city.[67] Only in those states where approval of, or certification of all facts to, a state administrative board or officer, and publication and recordation of its findings, is required prior to the issuance of any securities, is there but little opportunity for the utilization of this means of circumventing debt and tax restrictions.[68] Some such control as this to avoid otherwise unchecked evasion would be clearly desirable were it not combined, as it is in most of the states providing it, with rigid limitations which prevent borrowing when it is most necessary.[69]

59. See Reimer v. Town of Holyoke, 27 P. (2d) 1032 (Colo. 1933). But *cf.* Department of Water and Power of the City of Los Angeles v. Vroman, 22 P. (2d) 698 (Cal. 1933).

60. Starmount Co. v. Town of Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933).

61. Muskegon Heights v. Danigelis, 253 Mich. 260, 235 N. W. 83 (1931).

62. Colo. Laws (Ex. Sess.) 1933, c. 16.

63. See note 11, *supra*.

64. Gunnison County Commissioners v. Rollins, 173 U. S. 255 (1899); State Bank of New York v. Henderson County, Ky., 35 F. (2d) 859 (C. C. A. 6th, 1929); Brown-Crummer Investment Co. v. City of Florala, 55 F. (2d) 238 (M. D. Ala. 1931); Chemical Bank & Trust Co. v. Oakland County, *supra* note 10; Edmunds v. City of Glasgow, 89 Mont. 596, 300 Pac. 203 (1931).

65. See, e.g., COLO. COMP. LAWS (1921) § 8841 (complete financial statements to be published semi-annually); *cf.* Sultiff v. Board of Commissioners of Lake County, 147 U. S. 230 (1893).

66. Bolton v. Wharton, 163 S. C. 242, 161 S. E. 454 (1931); Kentucky Utilities Co. v. City of Paris, 248 Ky. 252, 58 S. W. (2d) 361 (1933).

67. *Cf.* Ohio Corrugated Culvert Co. v. Logan County Court, 171 S. E. 110 (W. Va. 1933).

68. For the facts which a purchaser must notice at his peril, see HARRIS, MUNICIPAL BONDS (2d ed. 1917) 115; *cf.* Bolton v. Wharton, *supra* note 66.

69. See EXISTING STATUTORY PROVISIONS FOR ADMINISTRATIVE SUPERVISION OF LOCAL CREDIT, *infra* III.

*Retiring of Securities and Refinancing.* Interest charges and maturity payments on short and long term indebtedness have consumed in many cities a large percentage of current revenues. In Detroit debt charges in 1931 equaled 42 per cent of the local tax levy,[70] and in Knoxville, Tennessee, 87 per cent.[71] For 81 cities debt service charges were in the same year 37 per cent of total operating costs exclusive of expenditures for public welfare.[72] Maturities of term bonds have often caused embarrassment because of diversion of sinking funds created for their retirement to pay interest charges and other current expenses, and because of failure to levy, or to collect, taxes to offset such diversions.[73] Even serial bond maturities often could not be met as a consequence of shrinking receipts. The combination of these factors with large short term debts, poor tax collections and bank failures has produced temporary crises in some of the best managed cities.[74] State legislatures, realizing the threat to continuation of municipal services, payment of salaries and political patronage, have attempted in almost every conceivable way to enable municipalities to reduce debt service charges, to fund the short term debt and refund bond issues, and to encourage compromise agreements with creditors.

As one means of effecting a reduction of debt charges, local governments have been empowered to purchase outstanding bonds at current market prices.[75] But while this would enable municipalities to benefit by any depreciation in the value of their obligations, many cities whose bonds were selling below par would in all probability not be in a position to take advantage of such laws. Some of the states have therefore provided for outside assistance. In Florida this takes the form of an authorization to state officials to purchase bonds of certain local districts and hold them in trust, while in North Carolina the cities themselves may borrow funds with which to purchase any of their bonds that are selling at a discount of 40 per cent or more.[76]

An expedient which has been devised for the purpose of retiring obligations without any direct outlay of cash is acceptance by municipalities of their own outstanding bonds at par in payment of both current and delinquent taxes.[77] In certain situations the constitutionality of statutes authorizing this practice is doubtful. The taxpayer who, because he can procure no bonds, must pay in cash, is perhaps entitled to invoke the guaranty of equal protection of

70. Stason, *The Fifteen Mill Tax Amendment and Its Effect* (1933) 31 MICH. L. REV. 371, 373.

71. PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, Appendix B.

72. *Id.* at 22.

73. *Ibid.*

74. See Beyer, *supra* note 28, at 165, for an account of Detroit's recent financial difficulties.

75. Fla. Gen. Laws 1933, cc. 15889, 15891, 15892 (county and district bonds to be purchased out of gasoline tax revenues). ILL. REV. STAT. (Smith-Hurd, 1933) c. 122, § 155c (purchase by municipalities out of idle funds); Mich. Acts 1933, no. 204 (same); N. C. CODE (Michie, Supp. 1933) § 2492 (69) (municipalities may borrow money to purchase their bonds at 40% discount or more).

76. See statutes cited in note 75, *supra.*

77. See note 31, *supra,* for collection of the statutes.

the laws. It has also been said that such laws work a discrimination between non-taxpaying bondholders and those who own taxable property in the district.[78] The creditor whose bonds are secured only by special assessment liens dischargeable as against a particular property when the assessment is paid, certainly stands to lose by payment of assessments in bonds. Indeed, in one of the several[79] decisions holding invalid such a procedure as applied to special assessment bonds, it has been emphasized that liens are discharged against the most valuable bonds, leaving worthless parcels as the only security.[80] Even where the bonds are secured by the general credit of the city, to make taxes payable in securities when at the time the bonds were sold they were payable only in cash, seems a patent violation of the obligation of contracts.[81] Several courts, however, have in such instances, sustained the enactments as valid efforts to liquidate delinquencies, to return to the rolls lands sold for taxes, and, by retiring a portion of the city's obligations, to improve the security available for those remaining outstanding.[82] Whatever the tenability of this view it would appear to be least subject to criticism where lands are still held by the state after several years of delinquency. Yet as applied to such a case a federal District Court has held such a provision void on the ground that for the state to accept bonds rather than cash before the redemption period expired would be a violation of its duty as "trustee" for the county and local taxing districts.[83] General acceptance of this reasoning by courts in the many states which have recently extended the redemption period on delinquent lands held by governmental units[84] would prevent the retirement of municipal securities in this manner until the longer redemption period had expired.[85] The decision conflicts with the usual view that county and other liens may be discharged after a reasonable period of delinquency;[86] in such circumstances, moreover, there is little justification for interference with legislative discretion.

Though framed primarily to aid distressed municipalities, the advantages to a city of these legislative provisions[87] are outweighed by their disadvantages. The receipt of bonds in place of cash can only benefit a municipality if tax obligations that would not otherwise be paid are thereby discharged. Yet the

78. See *Re* Cranberry Creek Drainage District, 202 Wis. 64, 68, 231 N. W. 588, 589 (1930).

79. See Howard v. State; Straus v. Ketchen, both *supra* note 33.

80. *Re* Cranberry Creek Drainage District, *supra* note 78. *Cf.* Halderman v. City of Astoria, *infra* note 82, in which such a law was held valid as to bonds that were also general obligations of the city.

81. Crummer v. City of Fort Pierce, 2 F. Supp. 737 (S. D. Fla. 1932); McNee v. Wall, *supra* note 33. But *cf.* Amy v. Shelby County Taxing District, 114 U. S. 387 (1885); Mereness v. Board of Education, *supra* note 31.

82. Dowling v. Butts, 149 So. 746 (Fla. 1933); Halderman v. City of Astoria, 140 Ore. 160, 13 P. (2d) 358 (1932).

83. McNee v. Wall, *supra* note 33.

84. See INCREASES IN REVENUES, *supra* IA, note 54.

85. This period may be five years, or longer. *Ibid.*

86. *Id.* note 80.

87. See note 31, *supra.*

extension of such a privilege to taxpayers may well result not only in a serious diminution of cash revenues[88] but also, if the provision is incorporated into the bond contract, in embarrassment to the city should a different policy later be attempted.[89] Furthermore, in the retirement of a municipality's indebtedness[90] the city rather than the taxpayer should be enabled to benefit from any depreciation in value by assistance in the purchase of bonds at the market.[91]

Legislatures must expressly grant to municipalities the power to issue bonds the purpose of which is to fund short term loans or to refund long term securities; the power cannot be implied from an authority to incur indebtedness for other purposes.[92] Since, however, such bonds create no new "indebtedness" within the meaning of debt limitation provisions,[93] constitutional restrictions do not prevent legislative authorization of their issuance without prior electoral approval, nor in excess of the permissible percentage of property valuation. The numerous statutes and charter provisions which in the past have granted the power to sell refunding bonds have accordingly not usually imposed any such conditions.[94] And similar advantage has been taken in recent legislation[95] providing for the funding of the large floating debts which are for the most part peculiar to the current depression. Furthermore, enactments of both these types usually do not prohibit sale at a discount or limit the rate of

88. See Crummer v. City of Fort Pierce, *supra* note 81, where it was alleged that as a result of the acceptance of bonds in payment of taxes, the current levy was insufficient to pay even interest charges on remaining indebtedness; and *cf.* City of Little Rock v. Howard, 103 Fed. 418 (C. C. A. 8th, 1900), where the allegation was made that if issuance of warrants receivable for taxes were ordered by mandamus, the city's cash revenues would be reduced by 25 per cent.

89. The legislature could not repeal such a provision. *Cf.* Hartman v. Greenhow, 102 U. S. 672 (1880); City of Little Rock v. Howard, *supra* note 88.

90. Acceptance of securities in payment of taxes is sometimes employed as a device for returning delinquent property to the tax rolls. See INCREASES IN REVENUES, *supra* IA, at p. 933. But there are a number of more efficacious and less disadvantageous means of attaining this result, as by selling the property for what it will bring or permitting payment of the delinquent taxes in instalments, compromising accrued interest and penalties when necessary. *Ibid.*

91. Some benefit could doubtless be made to accrue to the municipality by providing for the receipt of bonds at 50 to 75 per cent of face value. But it would be difficult so to vary a statutory percentage as to have it approximate at all times the rate of discount obtaining in the bond market plus a margin sufficient to induce taxpayers to take advantage of the provision.

92. MCQUILLIN, MUNICIPAL CORPORATIONS (2d ed. 1928) § 2441.

93. *Id.* § 2385.

94. E.g., Idaho Laws 1933, c. 157; MICH. COMP. LAWS (1929) § 2695; OHIO CODE (Page, 1926) § 3925; TENN. CODE (1932) § 3700; VA. CODE (Michie, 1930) § 3090a.

95. Idaho Laws 1933, c. 131 (highway district warrants), c. 153 (county warrants), c. 157 (same for school districts); ILL. REV. STAT. (Smith-Hurd, 1933) c. 24, §§ 662-(c) to (h), c. 34, §§ 107(h) to (l) (county indebtedness for poor relief); N. H. Laws 1933, c. 163 (short term notes); N. Y. Laws 1932, cc. 1, 2 (liability incurred for public welfare); Pa. Laws 1933, p. 1065, No. 249, p. 1066, No. 250 (relief debt); Wis. Laws 1933, c. 382.

interest,[96] as is commonly true of legislation authorizing other bond issues.[97]

But whatever immunities refunding bonds possess obtain only insofar as the bonds remain within the "refunding" category. If the principal amount of the new issue is greater than that of the old, new "indebtedness" may arise as to the excess. Under the constitutions[98] of some of the states, the whole new issue would then presumably have to be approved by the electorate. Or if the excess, plus other obligations, totals more than the allowed percentage of property valuation, the entire issue may be void for lack of any divisibility. Recently imposed constitutional tax limits,[99] moreover, while excepting levies to meet interest on bond issues which fund or refund indebtedness incurred prior to their adoption, may well be interpreted as preventing taxation above their limits to pay debt charges on the principal amount by which the new bonds exceed the old. Such a rule would render difficult any exchange of bonds that might be necessitated by inability to market the refunding issue, especially were it desired to fund interest in default and add it to the principal of the new bonds. Another not illogical restrictive interpretation of the word "refunding" would exclude that portion of the total amount of refunding bonds the proceeds of which are used for some purpose other than retirement of the old issue. Thus, if an issue is refunded by bonds of the same principal sum but sold at less than par, the amount of the discount may be said to create new "indebtedness."

These possibilities are implicit in the recent declaratory judgment of the Michigan Supreme Court[100] construing the fifteen mill tax amendment to the state constitution. The court declared that charges on funding and refunding bonds could be met by levies above the tax limit only insofar as the principal sum was no greater than that of the old issue, and only if the new bonds were not sold at a discount; any excess, the court held, would have to be absorbed by other revenues. On the point of sale at less than par the Michigan opinion is directly contrary to an earlier decision of the Florida Supreme Court[101] holding that funding bonds authorized to be sold at a discount were within the constitutional provision excepting "refunding" bonds from the requirement of electoral approval. Under both the decisions, however, refunding bonds may carry an interest rate higher than that on the old bonds. The metaphysics of the Michigan court therefore seem rather devoid of practical effect, for the only purpose of preventing sale at a discount or of confining the new issue to

96. Notes 94 and 95, *supra*. *Cf.* Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211 (1921).

97. E.g., COLO. COMP. LAWS (1921) § 1991; Colo. Laws 1933, c. 115, § 4; GA. CODE (Michie, 1926) § 439(34); KY. STATS. (Carroll, 1930) §§ 3071, 3079, 3261; MICH. COMP. LAWS (1929) §§ 2690, 14706; N. Y. GEN. MUN. LAW (Cahill, 1930) c. 26, § 8; OHIO CODE (Page, 1926) §§ 3923, 3924, 3926; OKLA. STATS. (1931) §§ 5927, 5928; TENN. CODE (1932) § 3698; TEX. REV. STAT. (Vernon, 1925) art. 708; WASH. REV. STAT. (Remington, 1932) § 5583-3; W. VA. CODE (1930) c. 13, art. 1, § 21; WYO. REV. STAT. (1931) § 22-1605.

98. See note 1, *supra*.

99. See INCREASES IN REVENUES, *supra* IA, note 29.

100. Wilcox v. Board of Commissioners, 262 Mich. 699, 247 N. W. 923 (1933).

101. Sullivan v. City of Tampa, *supra* note 96.

the same principal amount as the old, would appear to be to assure the retirement of the old bonds at no additional cost to the municipality. Nevertheless, some escape from the rigidity of constitutional limits on taxes and debts is probably essential at the present time; inability to fund and refund obligations might well precipitate default.

To facilitate forced refunding and compromise agreements statutory assistance has been made available by some of the state legislatures. Inasmuch as bondholders cannot be coerced into accepting refunding bonds instead of cash in payment of interest and principal maturities,[102] several states have sought to encourage such acceptance by guaranteeing the interest and principal of refunding issues,[103] or by providing for an exchange of state for municipal bonds.[104] In some jurisdictions state commissions have been given plenary powers over refunding and compromise agreements,[105] while in others provision has been made for the appointment of receivers upon application of municipal authorities to effect necessary financial adjustments.[106] Either with this statutory encouragement or in its absence, several types of refinancing have been attempted. Thus a refunding agreement providing for postponement in the payment of both the interest and principal on outstanding obligations enabled Detroit to reduce debt service charges appreciably during its period of emergency; the burden on future taxpayers will be greater, however, by the amount of the indebtedness thus deferred.[107] Another type of compromise, proposed for Coral Gables, Florida,[108] would relieve a municipality of a portion of its debt if it is unable to collect certain delinquent taxes constituting the only security for that part of the refunding issue the obligation of which is con-

102. Emmett Irrigation District v. McNish, 38 Idaho 241, 220 Pac. 409 (1923); Legis. (1933) 33 COL. L. REV. 1050, 1052. And see RIGHTS OF CREDITORS AFTER DEFAULT, *infra* IIB.

103. See, e.g., Conn. Acts 1933, c. 32a, § 90c (municipal bonds for relief); N. H. Laws 1933, c. 63 (bonds of municipalities in financial straits). But *cf.* KY. CONST. § 177 (credit of state not to be given or loaned to municipalities).

104. This has been done in Arkansas, California, Georgia, North Carolina and Texas. See REDUCTION OF EXPENSES, *supra* IB, note 30.

105. Mich. Acts (Ex. Sess.) 1932, No. 13 (Debt Commission); N. J. Stat. Serv. 1931, § 136-4700(101-103) (Municipal Finance Commission); N. C. Laws 1931, c. 60 (Public Debt Commission). See Legis. (1933) 46 HARV. L. REV. 1317, 1320. *Cf.* Ontario Stat. 1932, c 27; Quebec Acts 1932, c. 56; Saskatchewan Stat. 1930, c. 116 (boards or commissions have power to force adjustment with creditors).

106. Ore. Laws 1933, c. 433; TEX. REV. STAT. (Vernon, 1925) art. 830. *Cf.* Mass. Acts 1931, c. 44, instituting a receivership for the city of Fall River.

107. The city's general indebtedness of $259,000,000, maturing in 1933 and 1934, was refunded late in 1933 into 20 and 30 year bonds, on which no principal payments were to be made for two years; the interest in default, plus the difference in the rate of 3% payable the first 2 years and the average rate of 4.5%, was funded at 3.25%. The city was thus able to avoid a present burden of about $30,000,000 a year. The cost of retiring the issue in this manner has, however, been estimated at $124,000,000 more than if it had been retired without refunding. (1933) 22 NAT. MUN. REV. 352; see (1933) 22 *id.* 573.

108. A small minority of bondholders have failed to deposit their holdings. PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, Appendix B.

tingent.[109] But creditors will seldom agree to compromises of this kind unless it is clear that the financial difficulties of the city are of a serious and permanent nature.

## II

## RIGHTS OF CREDITORS AFTER DEFAULT

The desperate efforts of municipalities to avert defaults by developing new sources of revenue, by administrative reforms and other reductions of expenses, and finally by extensive borrowings, have in a great number of cases been wholly unsuccesful. But it is the unhappy lot of creditors of municipal corporations that in most cases they are entirely without power to intervene in the affairs of their debtor until default has actually occurred.[1] When default does occur, however, the creditors' rights mature, and it becomes important to determine what remedies they have and what control they may exercise over the affairs of the municipality.

### A. Enforcement of Claims

*Mandamus.* The prerogative writ of mandamus, the traditional remedy of the holders of obligations of public corporations, is available in theory only when other legal remedies are inadequate.[2] But judgment creditors can have execution only upon such of a city's properties as are not devoted to a "public purpose"; and courts have been diligent in finding some semblance of public use for almost any property upon which creditors seek to levy.[3] Garnishment of a municipality's debtors is apparently subject to similar limitations.[4] Indeed, the usual remedies of the law profit a city's creditors so little that failure to resort to them is frequently disregarded by the courts in issuing mandamus.[5]

109. Under the plan for Coral Gables, creditors would be given $4,000,000 in refunding bonds, sinking fund payments to be deferred six years; and $4,166,000 in "corporate stock." The interest on the latter would be payable out of revenues from various delinquent taxes, special assessments and public utility funds. For other compromise proposals, see Public Administration Service No. 33, *op. cit. supra* note 2, Appendix B.

1. Where a statute requires an annual levy for repayment of interest and principal of bonds, however, mandamus will issue to compel such levy even though the debt has not yet matured. Sidney Spitzer & Co. v. Commissioners of Franklin County, 188 N. C. 30, 123 S. E. 636 (1924).

2. Riggs v. Johnson County, 6 Wall. 166 (U. S. 1867); 6 McQuillin, Municipal Corporations (2d ed. 1928) § 2705; 2 Bailey, Habeas Corpus (1913) § 203; Ferris, Extraordinary Legal Remedies (1926) § 212. For a collection of cases on remedies of creditors of municipalities, see Fordham, *Methods of Enforcing Satisfaction of Obligations of Public Corporations* (1933) 33 Col. L. Rev. 28; Legis. (1933) 33 *id.* 1050; Legis. (1933) 46 Harv. L. Rev. 1317.

3. Fordham, *supra* note 2, at 29, 30, n. 7-19.

4. *Id.* at 30-32, n. 20-33.

5. In the case of a bonded debt the validity of which is not in dispute it is not always necessary to have even a judgment. Little River Bank and Trust Co. v. Johnson, 105 Fla. 212, 141 So. 141 (1932); Fidelity National Bank and Trust Co. of Kansas City v.

American courts have in fact been exceedingly liberal in granting this "extraordinary" remedy, permitting it at any point at which an official duty may be clearly discerned. Not only may bondholders force a city treasurer to fulfill an already issued order of payment,[6] and compel such an order to be issued[7] whether or not funds are available;[8] but the creditors may also require the collection of levied taxes,[9] and even the levy of new assessments[10] within the municipality's constitutional or statutory taxing power. Thus mandamus is in fact generally available to a city's creditors, and at least when a default results from dereliction of official duty, or from mere disinclination to pay just debts, it is entirely adequate.

But in a depression, defaults upon municipal indebtednesses are likely to arise from inability to pay, rather than from mere unwillingness. Such inability may be legal, or factual, or both. If all of the funds already collected and in a city's treasury are required for its current operating expenses, courts will not allow bond or warrant holders to secure payment therefrom.[11] And if constitutional or statutory tax limits have been reached,[12] a city will be entirely without power, and a court cannot compel it, to procure further

Morris, 127 Kan. 283, 273 Pac. 425 (1929). In the Federal courts mandamus may issue only in aid of a judgment. Wood Brothers Construction Co. v. Yankton County, S. D., 21 F. (2d) 267 (C. C. A. 8th, 1927). And where the law provides that bonds shall be paid by a tax levy, mandamus after judgment may be the only remedy available. Heine v. The Levee Commissioners, 19 Wall. 655 (U. S. 1873).

6. McQUILLIN, *op. cit supra* note 2, § 2719, n. 35.

7. Sellers v. Frohmiller, 24 P. (2d) 666 (Ariz. 1933); Beach v. Myll, 264 Mich. 604, 250 N. W. 324 (1933), State *ex. rel.* Morris v. Clark, 116 Minn. 500, 134 N. W. 129 (1912); State *ex. rel.* Newton McDowell, Inc. v. Smith, 67 S. W. (2d) 50 (Mo. 1933); Fordham, *supra* note 2, at 37, n. 70; *cf.* Peters v. State *ex. rel.* Jaehn, 42 Ohio App. 307, 182 N. E. 139 (1932), where the court refused mandamus for issuance of a warrant on the ground that the award of the city council, upon which the suit was based, had been unmerited.

8. Symons v. United States *ex. rel.* Masters, 252 Fed. 109 (C. C. A. 9th, 1918); Robertson v. Board of Library Trustees, 136 Cal. 403, 69 Pac. 88 (1902); see Herdman v. State *ex. rel.* Jacobs, 6 Boyce 24, 30, 96 Atl. 199, 202 (Del. 1915). *Contra*: Board of Improvements v. McManus, 54 Ark. 446, 15 S. W. 897 (1891); McCaslan v. Major, 64 S. C. 188, 41 S. E. 893 (1902). The question may have particular importance in the event of warrants being receivable for taxes, since the fact that they may not be paid is not then controlling as to their value. *Cf.* City of Little Rock v. United States *ex. rel.* Howard, 103 Fed. 418 (C. C. A. 8th, 1900).

9. State *ex. rel.* Vans Agnew v. Johnson, 150 So. 111 (Fla. 1933); Ziccarelli v. Stuckart, 277 Ill. 26, 115 N. E. 192 (1917); Gunderson v. Young, 48 S. D. 448, 205 N. W. 28 (1925); Stinson v. Godbe, 48 Utah 444, 160 Pac. 280 (1916).

10. 6 McQUILLIN, *op. cit. supra* note 2, § 2722, n. 50; Fordham, *supra* note 2, at 44, n. 115.

11. East St. Louis v. United States *ex. rel.* Zebley, 110 U. S. 321 (1884); United States *ex. rel.* Stayton v. Paschall, 9 F. (2d) 109 (E. D. Ark. 1925). But a reduction has been ordered, and the order sustained, where expenses were apparently increased to defeat the success of a creditor's claim. Deuel County, Nebraska v. First National Bank of Buchanan County, 86 Fed. 264 (C. C. A. 8th, 1898).

12. Constitutional and statutory provisions of this nature are collected in Legis. (1934) 47 HARV. L. REV. 688, 689, n. 6, 7.

funds in order to pay its debts.[13] Even when the law does not thus complicate the creditors' rights, exhaustion of taxpayers' resources, depreciated real estate values, and the sympathy of municipal officials with their debt-ridden neighbors, may make mandamus wholly ineffective. If an increase in the tax rate will be productive only of further delinquencies, creditors will profit little from their right to secure mandamus.[14] Nor will foreclosure of tax liens be of benefit; the absence of competitive bidders may compel the city itself to buy in the land, thus accomplishing only the removal of the property from the tax rolls.[15] Indeed, foreclosure may be precluded by legislative enactment or by the unwillingness of local officials to eject citizens from their homes. In earlier periods of financial distress it happened not infrequently that tax collectors and sheriffs accepted jail sentences for contempt of court rather than obey mandamus orders issued to compel collection of a new tax.[16] But such extreme self-sacrifice is not ordinarily necessary to render a mandamus order innocuous. If the official to whom the order is directed merely absents himself from the jurisdiction, the petitioning creditor will be helpless to enforce it until he returns or until a substitute official has been appointed. If such an appointment is made the new appointee may in turn leave the state.[17] And it is all too easy

13. Mandamus may only compel exercise of existing power; it can create no new power to tax. United States v. County of Macon, 99 U. S. 582 (1878); J. B. McCrary Co. v. Brunson, Mayor, 204 Ala. 85, 85 So. 396 (1920). But where the right to tax has not been fully exercised for several years the court may order that the unexhausted taxing power that has accumulated during this time shall be exercised in one year even though the resulting tax exceeds the usual legal limit. Evans v. Yost, 255 Fed. 726 (C. C. A. 8th, 1919); *cf.* Stevenson v. Love, 106 Fed. 466 (C. C. D. N. J. 1901). Cases are collected and the question more fully discussed in Fordham, *supra* note 2, at 49-51.

14. "[A] protective . . . committee for the city . . . where defaulted debt is more than $7,000,000, obtained a writ of mandamus for the levying of a 100 mill tax . . . The . . . Committee for [another city], whose debt is more than $17,000,000, obtained a writ for the levying of sufficient taxes to pay all past due bonds and coupons . . . about $6,000,000 . . . Such tax collection in a single year was obviously impossible . . . mandamus writs for heavier taxes are easy to obtain, but there is a point beyond which returns from higher taxes diminish." (1932) 12 BARRON'S (No. 16) 13.

15. INCREASES IN REVENUES, *supra* IA, at p. 929, n. 13.

16. Failure to comply with a mandamus order will subject the recalcitrant officer to personal liability for the damages thus caused, Amy v. The Supervisors, 78 U. S. 136 (1870), or to contempt proceedings. United States v. Green, 53 Fed. 769 (C. C. W. D. Mo. 1892); *In re* Copenhaver, 54 Fed. 660 (C. C. W. D. Mo. 1893). In St. Clair County, Missouri, it was at one time a qualification for office that the candidate agree to go to jail rather than have a hand in tax collection for the purpose of debt payment. In 1932 the Mayor and seven other officials of Hollywood, Florida, were sentenced to thirty days in jail for refusal to obey a mandamus writ. PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933) 19. Bond litigation has dragged through the courts for as much as forty-five years with little result. State v. Woodruff, 150 So. 760 (Miss. 1933), noted in (1934) 43 YALE L. J. 831.

17. A Kansas county chose its officials with the understanding that they should remain in hiding and appear in the jurisdiction to transact business only at night. PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 16, at 13. The general rule is that a writ

for a city to occasion extensive delays by not appointing or electing persons to fill the office of tax collector.

*Equitable Relief.* Nor will equity come to the aid of a city's bond and warrant holders, although with mandamus thus ineffective their remedy at law is hardly adequate. Upon petition by creditors holding a lien upon the property of a defaulting private corporation, equity will willingly appoint a receiver of the debtor's business and assets.[18] Similarly, appointment of a receiver to conserve the assets of a defaulting public corporation, and to collect revenues and apply them when proper to the payment of debt charges, might be granted;[19] for it could be said that real estate taxes and assessments constitute a lien upon the property within a taxing district, and the voters in approving an issue of bonds so secured may plausibly be deemed to have contemplated that holders of the bonds should be accorded the usual equitable remedies. But American courts have not been willing thus to interfere in the administration of a public corporation. Neither waste and misuse of funds,[20] nor refusal of officials to collect taxes,[21] nor even complete abolition of the obligated taxing district and failure to elect the officials charged with levy and collection of taxes,[22] will entitle creditors of a political subdivision to a receiver of their debtor.[23] It is true that in Iowa and Maryland legislation early relieved creditors of municipalities of this predicament by providing that courts of equity could appoint officers to perform all the acts required to satisfy a writ of mandamus.[24] And statutes in a few jurisdictions have authorized appointment of receivers to collect taxes levied for the payment of a defaulting drainage or irrigation district's bonds.[25] In most states, however, it is still impossible for a defaulting municipality's creditors to secure payment of their obligations.

B. READJUSTMENT OF MUNICIPAL DEBTS: THE DISSENTING CREDITORS

The impasse in which creditors of a city thus find themselves soon indicates the inevitability of a compromise which will give them an enforceable right

against a public officer runs against the office and does not abate upon his resignation. 6 MCQUILLIN, *op. cit. supra* note 2, § 2733. And in some states resignation does not become effective until a successor has been appointed or until the statutory term of office has expired. United States v. Green, *supra* note 16.

18. 2 CLARK, RECEIVERS (2d ed. 1929) § 700.

19. See dissenting opinion of Mr. Justice Harlan in Thompson v. Allen County, 115 U. S. 550, 561 (1885).

20. Marar v. San Jacinto and P. V. Irrigation District, 131 Fed. 780 (C. C. S. D. Cal. 1904).

21. Thompson v. Allen County, *supra* note 19.

22. Meriwether v. Garrett, 102 U. S. 472 (1880).

23. See also Rees v. City of Watertown, 86 U. S. 107 (1873); Heine v. The Levee Commissioners, *supra* note 5.

24. In Iowa such a provision was enacted in 1860, now found in IOWA CODE (1931) § 12453. A similar provision, enacted in 1888, is to be found in MD. CODE ANN. (Bagby, 1924) art. 75, § 141. In Supervisors of Lee County v. Rogers, 7 Wall. 175 (U. S. 1868), the Court exercised the right granted under the Iowa statute.

25. See statutes collected in Legis. (1933) 46 HARV. L. REV. 1317, 1320, n. 24.

against the city—a conclusion to which city officials in most cases readily assent. A number of state legislatures have facilitated the negotiations which follow by authorizing receiverships or by creating commissions with power to control, among other matters, refunding or compromise agreements; a few statutes provide that during the period of negotiation the creditors' right to mandamus shall be suspended.[1] Many cities and their creditors have agreed upon much needed readjustments, enabling the former to perform their essential functions and at the same time to pay their debts as rapidly and as fully as possible. The readjustment plans have called for scaling down of principal obligations, or for reduction of interest rates, or for mere deferring of payment, as the circumstances of each city have required.[2] When acceded to by all creditors, these agreements have at least provided solutions for the more immediate problems.

But, as in the reorganization of private corporations, difficulty has been encountered in dealing with dissenting minorities of bond and warrant holders. Cooperation may be secured from as many as seventy or eighty per cent of such creditors, and yet abandonment of the plan made necessary by the defection of the others.[3] Enforcement of the terms of the plan against a recalcitrant minority encounters the constitutional prohibition against impairing the obligation of contracts. And mandamus, though ineffective when full payment is sought by all creditors, becomes, in the hands of a dissenter, a strong weapon for the obstruction of a readjustment plan; funds intended for a pro rata payment to all in accordance with the plan may be reached by such a creditor and made a source for the full payment of his claim.[4] Since the expense of "buying out" the dissenting minorities is in most cases prohibitive, control of them by law is essential to effective readjustment of municipal debt structures.

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1. Note 6, *infra*. The New Jersey Court of Errors and Appeals recently upheld the constitutionality of such a statute, the question before the court being the right to stay creditors' remedies against a municipality in the control of a state finance commission. N. Y. Times, April 13, 1934, at 14.

2. Details of several plans are set out in Appendix A of PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933).

3. Coral Gables, Florida, has perfected a plan whereby $9,000,000 of bonds are to be replaced by $4,000,000 of bonds and $5,000,000 of "stock" and the city to be limited to $220,000 a year for current expenses. About 90% of the creditors are favorable to this plan, but its execution has been delayed by the refusal of the remaining 10% to cooperate and the inability of the city to secure funds to pay their claims in full. A town in Alabama, with a debt of $952,000, is reported to have perfected a plan of readjustment agreeable to creditors holding $950,000 of bonds; but the plan was rendered useless when the holder of the remaining $2000 brought suit and disrupted the settlement. HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, 73d Cong., 2d Sess. (1934) at 14.

4. Mandamus may not be refused for the reason that only part of the bonds are represented by the petitioner. Supreme Forest Woodmen Circle v. Snow, 151 So. 393 (Fla. 1933); Territory *ex. rel.* Parker v. Mayor, 12 N. M. 177, 76 Pac. 283 (1904). And in many instances full payment of a claim may be enforced from funds on hand even though a preference over other creditors thereby results. Comment (1933) 21 CALIF. L. REV. 161; Note (1933) 12 ORE. L. REV. 164.

*Restrictions on Mandamus.* Perhaps the simplest effective measure for controlling the recalcitrant minority among a municipality's bond and warrant holders would lie in judicial refusal to grant mandamus at their petition. Mandamus is traditionally a discretionary writ, and certainly courts could not exercise their discretion in a cause more socially important than the preservation of municipal solvency. Nevertheless, during earlier periods of financial distress the rule was developed that economic emergency and threatened municipal insolvency did not constitute grounds for denying mandamus to a city's creditors;[5] and it has even been said that legislative enactments making these defenses available to a city would be inoperative.[6] A similar attitude has been taken by most courts considering the question during the present depression.[7] It is probable, therefore, that no assurance of control over dissenting creditors will be found in restrictions upon mandamus.

*Eminent Domain.* If funds necessary for such a purpose could be procured, condemnation of the dissenters' bonds by eminent domain might provide an effective solution to the dilemma. There are no restrictions upon the kind of property rights which may thus be seized for public purposes. Authority may be found for condemnation of real property and of appurtenant rights such as easements and riparian rights,[8] tangible personal property,[9] contracts of different kinds,[10] corporate franchises,[11] shares of stock,[12] even including the

5. City of Gelena v. Amy, 5 Wall. 705 (U. S. 1866); City of Little Rock v. United States, 103 Fed. 418 (C. C. A. 8th, 1900); Hammond v. Place, 116 Mich. 628, 74 N. W. 1002 (1898).

6. Previous attempts to restrict creditors' rights against municipalities have been unsuccessful. *Cf.* Wolff v. New Orleans, 103 U. S. 358 (1880); Seibert v. Lewis, 122 U. S. 284 (1886). A statutory restriction on mandamus was recently held unconstitutional in Florida. State *ex. rel.* Buckwalter v. City of Lakeland, 150 So. 508 (Fla. 1933). Analogous laws have, however, been passed elsewhere. N. J. Stat. Serv. (1932) § 136-4700 (352); N. C. CODE ANN. (Mitchie, Supp. 1933) § 2492 (66).

7. *Cf.* City of Victor v. Halstead, 84 Colo. 450, 271 Pac. 185 (1928); Dos Amigos, Inc. v. Lehman, 100 Fla. 1313, 131 So. 533 (1930); see Gillespie v. County of Bay, 151 So. 10 (Fla. 1933) (defaulted instalments prorated over several years on grounds of undue hardship). In New Jersey a mandamus writ against a financially distressed township was refused, apparently on the ground that to grant it would confuse the township's financial affairs. At the time the township was under supervision of a commission, authorized by legislation the constitutionality of which had not yet been upheld. Hourigan v. North Bergen Township in Hudson County, 165 Atl. 74 (N. J. 1933). The constitutionality of the statute and the decision of this court have been sustained in the state appellate court. See note 1, *supra.*

8. Yates v. Milwaukee, 10 Wall. 497 (U. S. 1870); New York Elevated Rr. Co. v. Fifth National Bank, 217 U. S. 333 (1910); Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527 (1906); State *ex. rel.* Britton v. Mulloy, 61 S. W. (2d) 741 (Mo. 1933).

9. Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685 (1897); United States v. New River Collieries Co., 262 U. S. 341 (1923).

10. Brooks-Scanlon Corp. v. United States, 265 U. S. 106 (1924); Russian Volunteer Fleet v. United States, 282 U. S. 481 (1931); *In re* Opening of Twenty-second Street, 102 Pa. 108 (1883).

11. Charles River Bridge v. Warren Bridge, 11 Pet. 420 (U. S. 1837); West River Bridge

taking of shares held by a minority in order to effect a railroad readjustment,[13] and debts, claims and choses in action.[14] There would seem to be little difficulty in meeting the one requirement that the taking be for a public use;[15] it has frequently been declared that "public use" is practically synonymous with public benefit.[16] The exercise of eminent domain would, it is true, require available funds for payment of the dissenters; compensation must be given for all property condemned.[17] Backers of the readjustment plan would gain, however, in that the condemned bonds or warrants would be purchased or paid not at their par but at their market value.[18] But even if this approximate equivalent of enforcement of the readjustment plan could be financed by a defaulting municipality and its creditors, a further obstacle would be found in the fact that eminent domain proceedings could reach only bonds or warrants, or their holders, within the same state. Insofar as a debt may be said to have a situs apart from the domicile of the creditor, such situs would presumably be that of the physical evidence of the indebtedness;[19] it would be difficult to sustain

Co. v. Dix, 6 How. 507 (U. S. 1848); New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650 (1885).

12. New York, New Haven and Hartford Rr. Co. v. Long, 69 Conn. 424, 37 Atl. 1070 (1897); People *ex. rel.* Murphy v. Kelly, 76 N. Y. 475 (1879); Spencer v. Seaboard Air Line Ry. Co., 137 N. C. 107, 49 S. E. 96 (1904); see Opinion of the Justices, 261 Mass. 523, 159 N. E. 55 (1927); 1 LEWIS, EMINENT DOMAIN (3d ed. 1909) § 216.

13. Offield v. New York, New Haven and Hartford Rr. Co., 203 U. S. 372 (1906).

14. Meade v. United States, 2 Ct. Cl. 224 (1866); Dunlap v. Toledo & A. A. Rr. Co., 50 Mich. 470, 15 N. W. 555 (1883); see Chemical Foundation, Inc. v. E. I. Du Pont de Nemours & Co., 29 F. (2d) 597 (D. Del. 1928); City of Phoenix v. Dickson, 40 Ariz. 403, 12 P. (2d) 618 (1932).

15. 1 LEWIS, *op. cit. supra* note 12, § 250.

16. *Cf.* Clark v. Nash, 198 U. S. 361 (1905); Strickley v. Highland Boy Gold Mining Co., *supra* note 8. In neither of these cases was the condemned property to be used by the general public; it was in fact used by individuals. But the state legislature had declared that to take property for some of the basic industries of the state was to take it for public use, apparently on the theory that encouraging these industries enhanced the general prosperity. The constitutionality of this taking was upheld by both state and federal courts. Further cases are collected in 1 LEWIS, *op. cit. supra* note 12, § 257, n. 26-30. On the other hand it may be argued that "public use" should include only a use made directly by the general public, such as a right of way [*id.* § 258], and it has been held that property must be directly taken by the public or by public agencies, and that public use and public welfare are not the same. *Cf.* Arnsberger v. Crawford, 101 Md. 247, 61 Atl. 413 (1905); *In re* Niagara Falls and Whirlpool Ry. Co., 108 N. Y. 375, 15 N. E. 429 (1888); Wisconsin River Improvement Co. v. Pier, 137 Wis. 325, 118 N. W. 857 (1908).

17. Both federal and state constitutions forbid taking of private property without compensation. The constitutional provisions are collected in 1 LEWIS, *op. cit. supra* note 12, §§ 9-61.

18. Boom Co. v. Patterson, 98 U. S. 403 (1878); Boston Chamber of Commerce v. Boston, 217 U. S. 189 (1910).

19. "Where a right is, by the law which created it, embodied in a document, the right is subject to the jurisdiction of the state which has jurisdiction over the document." CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1930) § 56. Under Section 56 the comment is that "A bond or a negotiable instrument, a so-called specialty, is a document embodying a right; and the state which has jurisdiction of the document has jurisdiction of the right."

an in rem action against the creditor in a state having no basis for jurisdiction other than that it is the debtor's domicile.[20] Of course, as soon as a non-resident creditor came within the state to seek payment of his claim, an alert city attorney might institute an eminent domain proceeding with jurisdiction based upon personal service. But the cooperating majority of a city's creditors would hardly be willing to carry out a readjustment plan with no more certain control over the dissenters than this.

*Emergency Police Power.* The most effective solution of the problem presented by the minority creditors lies in enforcement against them of the terms of the readjustment plan. Such enforcement by authority of state statutes would presumably be permitted as against creditors who became such after enactment of the statute; analogy could be drawn to similar legislation dealing with the reorganization of banks,[21] and to the cases holding that legislation to have been incorporated into the contracts of subsequent creditors.[22] But even a statute thus upheld would perhaps prove inadequate as a solution of municipal problems, for the theory that a state cannot carry its legislation beyond its own bounds might preclude enforcement against non-resident creditors.[23] The immediate problem of American cities, however, arises not from prospective inability to reach future creditors, but from the prohibition which the Contract Clause of the Constitution places upon the enforcement of a readjustment plan against persons now holding municipal bonds, notes and warrants. A possible escape from this prohibition is suggested by the decision of the New York Court of Appeals in *People of New York v. Title & Guarantee Mortgage Co. of Buffalo.*[24] The Schackno Act had authorized the enforcement against all creditors of mortgage guaranty companies of reorganization plans approved by two-thirds of their creditors.[25] The Court of Appeals upheld the statute, even as against creditors who acquired their claims prior to its enactment, upon the ground that the law did not unreasonably impair "substantial" rights, and that circumstances exist which warrant some subordination of individual rights to social good. There is, however, some basis for the contention that this decision would not justify similar impairment of the rights of a city's dissenting creditors. It may be argued that since a private corporation's ability to pay is defined by a limited and ascertainable amount of assets, its creditors' actual rights are likewise limited; a municipality's assets, on the other hand, are theoretically unlimited. Thus whereas it may be said that in the former case a reorganization plan merely re-states nominal rights in terms of actual rights,

20. *Cf.* Pennoyer v. Neff, 95 U. S. 714 (1877).

21. These statutes are collected in Legis. (1932) 32 COL. L. REV. 1395.

22. Hoff v. First State Bank of Watson, 174 Minn. 36, 218 N. W. 238 (1928); Farmers' and Merchants' Bank v. Tomlinson, 55 S. D. 185, 225 N. W. 305 (1929); cases cited in Comment (1933) 32 MICH. L. REV. 221, 222, n. 7-9. *Cf.* McConville v. Fort Pierce Bank & Trust Co., 101 Fla. 727, 135 So. 392 (1931); Dorman v. Dell, 245 Ky. 34, 52 S. W. (2d) 892 (1932).

23. Beers v. Haughton, Fed. Cas. No. 1230 (C. C. D. Ohio 1834); Hornick, More & Porterfield v. Farmers' and Merchants' Bank, 55 S. D. 18, 227 N. W. 375 (1929).

24. N. Y. Times, March 20, 1934, at 15. The case is noted in (1934) 43 YALE L. J. 1007.

25. N. Y. Laws 1933, c. 745.

readjustment of a municipal obligor's debts clearly constitutes an actual deprivation of the creditors' property. The fact that, whatever the theory, a city's assets are not in fact unlimited perhaps affords sufficient answer to such an argument; but the complete dependence of the decision upon the existing emergency as the basis of constitutionality makes it at best an uncertain and tentative method of controlling a city's dissenting creditors.

*The Sumners Bill.** With state authorities thus restricted in their power to enforce a municipality's readjustment plan, the proposal has been made that recourse be had to the constitutional power of the Congress to pass uniform laws upon the subject of bankruptcies. The present Bankruptcy Act expressly excludes municipal corporations from its purview.[26] Amendment of the Act by the addition of new sections providing for the reorganization of municipal debts has accordingly been urged; and in June, 1933, a bill[27] designed to effect such an amendment, sponsored by Representative Sumners of Texas,[28] was passed by the House and sent to the Senate for consideration. The importance of this proposed legislation warrants an extended examination and criticism of it.

The Sumners Bill, declaring a national emergency to exist,[29] provides that any political subdivision or taxing district[30] may file a petition with the bankruptcy court of the district in which it[31] is located; such petition must allege that the district is "insolvent or unable to meet its debts as they mature," and that holders of at least 30 per cent of its bonds, notes, or certificates of indebtedness consent in writing to the filing of the petition and signify either their willingness that a readjustment plan be drawn up or their approval of a plan submitted by the petitioner with the petition.[32] These allegations may be denied, and the district's right to file the petition put in issue, by holders of

*The Sumners Bill and related problems are also discussed at pages 989, 997, and 1005, *infra.*

26. § 4 (a) (b), 36 STAT. 839 (1910), 11 U. S. C. § 22 (a) (b) (1926).

27. H. R. 5950, 73d Cong., 2d Sess. (1934).

28. This legislation originated as H. R. 3083, an intermediate revision appearing as H. R. 5267. The bill has been called the Wilcox-Bill, the Fletcher Bill, the Wilcox-Fletcher Bill, and finally the Sumners Bill. Senator Ashurst's amendment appears as S. 1868. On May 1, 1934, the Senate adopted the McCarran amendment. This differs from the Sumners Bill chiefly in allowing a city to file a petition only when it has already secured the approval of 51% of its creditors to a readjustment plan.

29. Inclusion of the emergency provision probably implies doubt as to the constitutionality of the amendment. This doubt seems unwarranted. See notes 50-53, *infra,* and text to which they are cited. The accompanying provision limiting operation of the amendment to two years is, upon this theory, unnecessary.

30. "Including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, levee, sewer, or paving, sanitary, port, improvement or other districts."

31. "Or the major part thereof."

32. A list of the names and addresses of all known creditors must accompany the petition. And see note 28, *supra.*

at least 5 per cent of the bonds, notes, or certificates of indebtedness; the bankruptcy judge is authorized to decide without the aid of a jury whether the proofs sustain the allegations, and hence whether the petition should be dismissed or approved. If it is approved, the court assumes full powers of courts of bankruptcy under voluntary petitions. The judge may enjoin proceedings against the taxing district in other courts;[33] and he may direct the rejection in whole or in part of executory contracts upon which the district is obligated,[34] the resulting breach giving the holder of the contract a provable claim for damages. But the judge may not interfere with any of the political powers of the taxing district, nor with any of its properties or revenues that are required for essential governmental purposes, nor with any revenue-producing property of the district.[35] At any time during the proceedings,[36] 10 per cent of the creditors whose claims would be affected by the plan, or the taxing district itself may submit a readjustment plan.[37] The bankruptcy judge is required to dismiss the proceedings if no plan is submitted within six months of the filing of the petition,[38] or if no plan is approved and accepted within a year from the same date; but the latter period may be extended for an additional year if the judge finds it necessary to do so. A readjustment plan approved by holders of not less than 30 per cent of the outstanding bonds, notes and certificates of indebtedness of the taxing district may be put into temporary effect by an interlocutory decree of the court, to remain in force until a plan is finally confirmed or the proceedings dismissed;[39] but if a budget has been adopted in

33. In addition to the usual bankruptcy powers and the express power to stay any action against a taxing district on account of its indebtedness, the bankruptcy judge may "enjoin or stay, until after final decree, the commencement or continuance of any judicial proceeding to enforce any lien or to enforce any levy of taxes." State statutes may authorize courts or commissions to restrict the creditors' right to ordinary remedies, but not their right to secure mandamus. See note 7, *supra*. But the proposal to allow federal restriction of the latter remedy would presumably be sustained because of the paramountcy of the federal bankruptcy power.

34. No restrictions upon this power are stated; contracts dealing with any phase of municipal administration, whether related to credit problems or not, may presumably, therefore, be escaped.

35. "Unless the plan of readjustment so provides."

36. And regardless of whether a plan was submitted with the petition. See note 28, *supra*.

37. A plan "(1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; and (2) may contain such other provisions and agreements, not inconsistent with this chapter, as the parties may desire." No reason occurs for thus *requiring* alteration of creditors' rights.

38. Since proof of the allegations necessary in the petition might occupy considerable time, particularly in the case of large cities, approval of a contested petition might not be secured within this six-month period; at best the time allowed would be appreciably reduced by a contest of the petition. See p. 977, *infra*. This difficulty would be obviated if the period were to run from *approval* of the petition, rather than from its filing. Yet the further delay which would be thus sanctioned would hardly be desirable.

39. The permission thus granted to reduce budgets and levies when the consent of less than one third of the bondholders (the third need not even be of all creditors) has been secured, seems of questionable wisdom.

reliance upon such a temporary plan, dismissal during the budget year is forbidden.[40] Final confirmation is permitted only when a readjustment plan has been approved by two-thirds of each class of creditors adversely affected by it,[41] and by the district. And before confirming a plan, the judge must determine, among other things, that it is "fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors, and is fairly based upon the reasonable capacity of the taxing district to pay, and is feasible,"[42] that all of the expenses of the readjustment have been disclosed, and are reasonable; and that the taxing district is authorized by law to take all action necessary to carry out the plan. Upon confirmation, the essential purpose of the proceedings is to be realized: the readjustment plan becomes binding upon all creditors, regardless of whether they have filed their claims or of whether they have accepted the plan, and upon the taxing district. The final section of the bill provides that its enactment shall not impair in any way state administrative supervision or control of political subdivisions; and if such supervision of fiscal affairs is provided, no petition may be filed, and no plan put into temporary or permanent operation, without the approval of the state supervisory agency.

The constitutionality of the proposal has been questioned,[43] upon the grounds that the bankruptcy power may be exercised by the federal government only in behalf of persons who are insolvent, that the subject of bankruptcies extends only to proceedings looking to the surrender of the debtor's assets for distribution to his creditors and to discharge of the debtor, and that the proposed amendment interferes with the states' right to control their own political subdivisions. None of these grounds is persuasive. It is true that if a taxing district may be said to have assets equaling the value of taxable properties within its boundaries, it could hardly become insolvent in the bankruptcy sense;[44] moreover, a petitioning district need not even allege "insolvency," since inability "to meet its debts as they mature" alone qualifies it under the Sumners Bill. But the practical as well as existing legal limitations upon municipal tax rates suggest

40. It is unfortunate that this prohibition was made absolute. The judge would presumably have the power granted even without its express allowance. But if the provision is to be included, mere authorization to continue the interlocutory decree in force during the budget year would accomplish the same purpose without tying the judge's hands when circumstances do not warrant such a continuation.

41. Consent is not required of creditors "(a) whose claims are not affected by the plan, or (b) if the plan makes provision for the payment of their claims in cash in full, or (c) if provision is made in the plan for the protection of the interests, claims, or liens of such creditors or class of creditors."

42. Such redundancy seems unnecessary.

43. Briggs, *Shall Bankruptcy Jurisdiction be Extended to Include Municipalities and Other Taxable Subdivisions* (1933) 19 A. B. A. J. 637; Morford, *Federal Legislation for Corporate Reorganization; A Negative View* (1933) 19 *id.* 702, 703; Stebbins, *Constitutionality of the Recent Amendment to the Bankruptcy Law* (1933) 17 MARQUETTE L. REV. 161; James A. McLaughlin, HEARINGS BEFORE SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 126 *et seq.*

44. § 1 (15) of the Bankruptcy Act, 30 STAT. 544 (1898), 11 U. S. C. § 1 (15) (1926).

that the aggregate of a taxing district's assets is in fact its current revenues and not the total of its taxable property,[45] so that insolvency is far from impossible. And in any event, insolvency is not a prerequisite of bankruptcy jurisdiction. A voluntary petition may be filed under Section 4 of the Act by "any person," without regard to his solvency;[46] an involuntary petition based upon an assignment for the benefit of creditors is good even though the debtor be solvent both at the time of the assignment and at the time the petition is filed against him;[47] and an "involuntary" petition may be based upon the debtor's written admission of "his inability to pay his debts."[48] Nor is the composition contemplated by the Sumners Bill in excess of the bankruptcy power. The privilege of working out a composition agreement under the protection of the bankruptcy court, and of enforcing it against minority creditors, was granted debtors by the Bankruptcy Act of 1867, and is now available through Sections 12 and 14 of the present Act.[49] The case of *In re Reiman*,[50] decided in 1874, definitely established that these composition provisions are properly included in the subject of bankruptcies.[51] Unless, therefore, the fact that the debtor is a political subdivision of a state is fatal, there should be little doubt as to the constitutionality of the Sumners Bill. Too much federal control over local units of government would, of course, be invalid.[52] But it may be

45. See discussion of INCREASES IN REVENUES, *supra* IA.

46. 36 STAT. 839 (1898), 11 U. S. C. § 22 (a) (1926); *In re* Foster Paint and Varnish Co., 210 Fed. 652 (E. D. Pa. 1914).

47. § 3a (5) of the Act, 30 STAT. 546 (1898), 11 U. S. C. SUPP. VII § 21a (5) (1933); George M. West Co. v. Lea Brothers & Co., 174 U. S. 590 (1899).

48. § 3a (6) of the Act, 30 STAT. 546 (1898), 11 U. S. SUPP. VII § 21a (6) (1933). While the language quoted is similar in purport to that of the Sumners Bill, the Act requires that an involuntary petition based upon this subdivision of Section 3a also allege the debtor's written consent that he be adjudged a bankrupt. *In re* Erie City Airport, Inc., 44 F. (2d) 673 (W. D. Pa. 1930). This involuntary petition thus closely resembles a voluntary petition. GILBERT, COLLIER ON BANKRUPTCY (2d ed. 1931) 124. The 1933 bankruptcy amendment permits reorganization of a railroad that is, as the Sumners Bill requires petitioning taxing districts to be, "insolvent or unable to meet its debts as they mature." 47 STAT. 1467 (1933), 11 U. S. C. SUPP. VII § 201-205 (1933). See Rodgers and Groom, *Reorganization of Railroad Corporations under Section 77 of the Bankruptcy Act* (1933) 33 COL. L. REV. 571, 575 *et seq.*; Legis. (1933) 33 *id.* 704, 706; Weiner, *Reorganization under Section 77: a Comment* (1933) 33 *id.* 834, 845 *et seq.*; Note (1933) 28 ILL. L. REV. 398; Comment (1933) 42 YALE L. J. 387; Garison, *The Power of Congress over Corporate Reorganizations* (1933) 19 VA. L. REV. 343.

49. 30 STAT. 549 (1898), 11 U. S. C. §§ 30, 32*c* (1926).

50. Fed. Cas. No. 11,673 (S. D. N. Y. 1874), *aff'd*, No. 11,675 (C. C. S. D. N. Y. 1875).

51. The Supreme Court has not passed upon the validity of the composition sections, and the lower courts have assumed the correctness of the *Reiman* case. Even if bankruptcy contemplates a *cessa bonarum* [Meyers v. International Trust Co., 273 U. S. 380 (1927); *In re* Klein, Fed. Cas. No. 7,865 (C. C. D. Mo. 1843); *In re* Adler, 103 Fed. 444 (W. D. Tenn. 1900)], composition agreements can be upheld, since they involve a surrender by the debtor of his assets. *In re* Reiman, *supra* note 50.

52. *Cf.* Metcalf and Eddy v. Mitchell, 269 U. S. 514 (1926); 1 WILLOUGHBY, CONSTITUTION OF THE UNITED STATES (2d ed. 1929) §§ 68, 97, and cases cited.

observed that Congress, not the Constitution, excepted municipal corporations from the purview of the Bankruptcy Act as it now reads. And a statute merely enabling a taxing district to place itself within the jurisdiction of the federal bankruptcy court, while preserving the political powers of that taxing district and requiring its consent to any readjustment plan, would not appear to encroach seriously upon state sovereignty. Furthermore, the Sumners Bill is careful to respect state control over political subdivisions, even to the extent of permitting the state to forbid its governmental units to resort to the bankruptcy court.[53] The conclusion therefore seems justified that the Sumners Bill is constitutional in its utilization of the bankruptcy discharge as a means of enforcing compósition agreements between taxing districts and their creditors.

Criticism of the Sumners Bill should begin with full recognition that some method of enforcing readjustments of municipal debt structures against minority creditors seems essential, and that utilization of the federal bankruptcy power appears to be the most feasible device for accomplishing such enforcement. In its essential purpose, therefore, the bill promises highly desirable relief for distressed municipalities. A study of its mechanics and draftsmanship, however, prompts the conclusion that the bill is not in fit shape effectively to serve in aid of the reorganization of municipal finances. Judging from repeated statements of its proponents, the bill has been drafted on the general notion that creditors and representatives of the debtor taxing district will draw up around a table and promptly agree upon a plan of debt readjustment; that only when a "recalcitrant minority" of the creditors threatens the plan will the new legislation show its teeth.[54] This picture, as reference to known comparable experience makes clear, is an aggravated over-simplification of such proceedings. The process of reorganizing private corporations including railroads and other utilities, affords the closest analogy. Indeed, the Sumners Bill, by its affirmative provisions and by its failure to provide necessary safeguards, contemplates for municipal debt reorganization many of the more objectionable features of traditional corporate reorganization through equity receivership.

Dissatisfaction with equity reorganization procedure has frequently been

53. "(1) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such State authorized to exercise supervision or control over the fiscal affairs of all or any political subdivisions thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

54. See, for example, the remarks of Representative Sumners, HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 24, 59.

expressed[55] because it defers impartial scrutiny of the fairness of a plan until the reorganization has been virtually consummated. Origination and promotion of the plan is left entirely to the debtor and to the usual retinue of bondhouses, bond "specialists," "committees," and lawyers. When the formal consent of a formal majority[56] of the creditors has been secured, the parties return to court and seek enforcement of the plan against dissenters by means of a judicial sale.[57] And in passing upon the reorganization at that time the principal concern of the court is with the determination of a fair upset price rather than with the terms of the plan adopted.[58] That such a procedure may not adequately protect minority interests has long been recognized.[59] Even more important, however, is the almost complete absence of protection for any public interest that may be involved, a difficulty which has been conspicuous in the costly failures and reorganizations of railroads. The first attempt to take control of railroad reorganizations from the bankers took the form of supervision by the Interstate Commerce Commission over all railroad security issues.[60] But the measure proved ineffective.[61] Accordingly, in providing last year for bankruptcy reorganizations of railroads, Congress required submission of the plan to the Commission "before creditors and stockholders of the debtor are asked finally to accept" it, and directed the Commission thereupon, after hearing, to "recommend a plan of reorganization (which may be different from any which has been proposed)."[62]

Even more than in the reorganization of railroads the public interest demands protection in the formulation and adoption of a municipal debtor's readjustment plan. Yet the Sumners Bill, taking no account of this fact, entrusts a distressed city's financial future to the hazards of a bargain driven by a helpless debtor with creditors who have every incentive to bleed the city without regard either to its public duties during the operation of the

55. See discussion in LOWENTHAL, THE INVESTOR PAYS (1933) 368 *et seq.*; dissent of Commissioner Eastman in Chicago, Milwaukee and St. Paul Reorganization, 131 I. C. C. 673, 711 (1928); Frank, *Some Realistic Reflections on Some Aspects of Corporate Reorganization* (1933) 19 VA. L. REV. 541, 565.

56. See McLaughlin, HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 126, 128.

57. For descriptions of the procedure in reorganizations through receiverships, see LOWENTHAL, *op. cit. supra* note 55; Rosenberg, *A New Scheme of Reorganization* (1917) 17 COL. L. REV. 523.

58. See discussions cited note 55, *supra*. The importance of focusing judicial attention upon the sale received emphasis in First National Bank v. Flershem, 54 Sup. Ct. 298 (1934).

59. See Frank, *supra* note 55; LOWENTHAL, *loc. cit. supra* note 55.

60. 41 STAT. 494 (1920), 49 U. S. C. § 20a (1926).

61. Principally because the Commission's powers were vague, and could not be exercised until too late in the reorganization proceedings. Note (1931) 44 HARV. L. REV. 838; dissent of Commissioner Eastman in Chicago, Milwaukee and St. Paul Reorganization, *supra* note 55.

62. 47 STAT. 1474 (1933), 11 U. S. C. SUPP. VII § 205 (1933). See discussions cited in note 48, *supra*.

plan or to its financial condition at the termination of such operation. Certainly the requirement of approval by two-thirds of the creditors, though perhaps an adequate check against any lack of formal integrity in a readjustment plan, affords small protection for the interest of the public in the necessary services of a municipal government. The "honestly selfish" demands of adverse claimants do not inspire reliance upon them as public fiduciaries. And the taxing district's weakness in bargaining strength when bankers and bondhouses submit and insist upon a completed plan, and its possible irresponsibility in financial management warrant an equal lack of confidence in it. If, therefore, the effect of a reorganization plan upon a municipality's ability properly to perform its essential functions of government is to receive careful consideration under the procedure afforded by the Sumners Bill, it can only be at the hands of the bankruptcy judge. Provision is made, it is true, for hearings upon the plan or plans submitted. But while these hearings promise a welter of advocacy, little clarification upon other than predominantly legal issues may be anticipated. Enlightenment upon the effect of a readjustment plan on all the details of municipal administration will be more difficult to procure. Indeed, in expressly permitting the taxing district to be heard upon all questions, and in requiring creditors to secure leave to intervene before they may be heard upon any question other than the proposed confirmation of a plan, the bill by inference excludes the allowance of a hearing to taxpayers, voters, boards performing municipal services, and others whose criticism of the reorganization plan would not be based upon a pecuniary interest. The conclusion seems required that the Sumners Bill makes inadequate provision for protection of the public interest.

Criticism of reorganizations through receivership has also centered upon the expensiveness of such proceedings. The fees of receivers, attorneys, appraisers, and others frequently mount into the tens of thousands,[63] and sometimes the hundreds of thousands.[64] The Sumners Bill places no restrictions on the size of these fees, or upon who may receive them; instead the bill expressly authorizes the judge to "allow a reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceedings, and the payment of special masters, readjustment managers and committees or other representatives of creditors of the taxing district, and the attorneys or agents of any of the foregoing." And "appeals may be taken, from the orders making such allowances, to the circuit court of appeals . . . independently of other appeals which may be taken in the proceedings, and such appeals shall be heard summarily." No fees shall be assessed against the taxing district

63. Douglas and Weir, *Equity Receiverships in the United States District Court for Connecticut* (1930) 4 CONN. BAR J. 1.

64. N. Y. World, Feb. 17-28, 1924. The expensiveness of the reorganization of the Chicago, Milwaukee and St. Paul Railroad Company has been much publicised. See Chicago, Milwaukee and St. Paul Reorganization, *supra* note 55; United States v. Chicago, Milwaukee, St. Paul and Pacific Rr. Co., 282 U. S. 311 (1931); LOWENTHAL, *op. cit. supra* note 55.

"except in the manner and in such sums, if any, as may be provided for in the plan of readjustment." Thus not only does the proposed statute permit large reorganization expenses; it even enables the claimants therefor to carry their demands to the Circuit Court of Appeals, and to hold up the operation of the readjustment plan until provision is made for their payment. Any hope that in requiring the judge's approval of these allowances the bill assures their reasonableness is negatived by the fact that similar powers of judicial scrutiny have had little effect upon the large fees characteristic of equity reorganizations. The suggestion[65] that the taxing district by refusing to accede to a plan may compel the reduction of exhorbitant fees is not persuasive; when committees of bondholders and bankers present but a single plan, and when resistance will in any event involve heavy additional expense, even competent and conscientious taxing district officials will see the handwriting on the wall.

In other respects also the Sumners Bill is subject to criticism. Leisurely negotiations followed by interminable hearings and persistent contests over every technicality, have made delay a much criticized[66] but perhaps largely inevitable characteristic of equity reorganizations. Where large interests are at stake, as will be true in the readjustment of many municipal debt structures, reorganization proceedings drag on for long periods of time. Far from providing machinery that could avoid such of these delays as are unnecessary, the Sumners Bill offers new opportunities for consumption of time. The lack of precision that appears in many of the bill's provisions will permit repeated demands for judicial construction. And several administrative provisions will prove time-consuming. Cumbersome municipal accounting systems will make a speedy determination of insolvency, whatever the application of that term to taxing districts may be held to mean, difficult if not impossible. Procuring the consent of creditors to a contest of the petition's allegations, or to the submission of a readjustment plan, may necessitate long delays; so also may the determination of whether creditors consenting to these matters, or to the original filing of a petition, constitute the required percentages of all the creditors. Whether various creditors are "adversely affected" by a plan, and if so, how they should be classified, as well as numerous other matters, may be decided by the bankruptcy judge only after hearing preceded by notice to interested parties. The Sumners Bill, it is true, requires dismissal of the entire proceedings if no readjustment plan is approved within a maximum of two years from the filing[67] of the petition. But the desirability of the provision, standing alone, is open to grave ques-

65. Statement of Representative Wilcox, HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 145.

66. Douglas and Weir, *supra* note 63, at 8; Swain, *Economic Aspects of Railroad Receiverships,* in 3 ECONOMIC STUDIES (1898) 53; statement of Professor W. A. Sturges, HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 100-101.

67. See note 38, *supra.*

tion.[68] It superimposes an arbitrary time limit on the proceedings while the rest of the bill necessitates protracted negotiations. Consequently it may induce hasty and ill-considered action upon essential but highly complex issues.

Employees of the city are entirely excluded from readjustment proceedings by the Sumners Bill; their claims may not be filed along with those of other creditors, and no provision is made for a hearing upon their rights. This discrimination seems grossly unfair. While all other creditors may prove their claims, only the required percentages of bond and note holders need consent to filing of the petition, contests of its allegations, or to temporary adoption of a readjustment plan. The exclusion of other classes of creditors may be designed to avoid difficulties in ascertaining a taxing district's total indebtedness for purposes of calculating the designated percentages; but it is probably to be explained rather as evidence of undue concern for a single class of creditors.

Finally, the general rationale of the Sumners Bill is clouded by obscurity. A properly qualified taxing district may file a *voluntary* petition to effect a readjustment of its debts; the readjustment plan shall be "fairly based upon the reasonable capacity of the taxing district to pay." These provisions hint at relief of distressed municipal debtors and through them of taxpayers, allegedly the dominant purpose of the bill.[69] Yet the "protection" accorded bondholders greatly blurs this purpose. The district can file such a voluntary petition only if 30 per cent of its bondholders agree; and 5 per cent of the bondholders may contest the allegations of the petition. These provisions manifest more solicitude for creditors than for the taxing district. On the other hand, the bill provides no constructive remedy for creditors of a taxing district that is not disposed to work with creditors in meeting the emergency. Apparently there was fear that a provision authorizing involuntary proceedings against such a taxing district would be unconstitutional. The fear does not seem warranted. There can be no question but that involuntary proceedings as much as voluntary proceedings constitute a proper exercise of the power of Congress over the subject of brankruptcies. Upon the score of interference with states' rights, as stated above, the provisions forbidding the bankruptcy court to interfere with "any of the political or governmental powers of the taxing districts," and the section giving full effect to any state control or supervision of political subdivisions,[70] would appear to afford ample assurance of constitutionality.

68. There is some ground for believing that this limitation was not included in order to expedite the readjustment proceedings, but rather for the sake of consistency with the emergency provision limiting the operation of the amendment. *Cf.*, however, note 29, *supra*. Yet the purpose for which such a limitation was included would not determine its actual effect.

69. Statement of Representative Wilcox, HEARINGS BEFORE SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 1868 AND H. R. 5950, *op. cit. supra* note 3, at 33.

70. See note 53, *supra*.

## III

## EXISTING STATUTORY PROVISIONS FOR ADMINISTRATIVE SUPERVISION OF LOCAL CREDIT

Section 80 (h) of the Sumners Bill provides that upon the entry of a decree discharging a taxing district from its debts except in accordance with a plan of readjustment, "the jurisdiction of the court in the proceedings shall cease." Limitations upon federal powers probably necessitate some such surrender of control in this or any similar amendment to the Bankruptcy Act. Yet protection of the public interest is as essential upon the consummation of a city's readjustment of its debts as it is in the plan's formulation. The readjustment provisions may be so severe and inflexible that a municipality will be financially unable to respond to unforeseen needs of the community it serves, needs which are necessarily fluctuating and uncertain. And even if further borrowing, other than to refund existing debts, is permitted under the readjustment plan, the control of the city's purse-strings established by the bankers and other creditors who dictated the terms of the readjustment might deter other investors from extending credit. A monopoly of the city's financing, with complete control of terms in the lenders, would thus result. More important, however, is the fact that confirmation of a plan of readjustment by a court of bankruptcy would offer no assurance that the indebted taxing district would not immediately, or at least upon the termination of the operation of the plan, resume the practices and policies that brought it into financial difficulty or made it easier prey thereto. A readjustment plan may provide for strict supervision of municipal finances for a period following discharge; on the other hand, it may concern itself only with a realignment of the city's debts, with no attempt at even temporary financial reformation. In any event, it can set up no permanent machinery to insure the continued availability of low-cost borrowing, avoidance of future defaults, or even, perhaps, complete fulfillment of the terms of the readjustment plan itself. Yet from the point of view of the public interest of the entire state, the most important aspect of a city's financial readjustment is not the mere solution of the immediate problems of actual default, but the establishment and maintenance in the future of a sound financial structure. The present depression has amply demonstrated that the poor credit standing of one city taints that of all other public borrowers within the state, including the state itself.[1] And the effect of financial mismanagement upon investors, some of them savings banks, insurance companies and other quasi-public institutions, is clearly of general concern.[2] It should be a matter of state public policy, therefore, that any plan for rehabilitating a city's credit structure should include in addition to an enforceable compromise agreement a constructive solution of its basic financial difficulties.

Recognition by state governments of their vital interest in municipal credit

1. See Bond Buyer, Jan. 2, 1932, at 5.

2. See PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933) 2; Stason, *State Administrative Supervision of Local Indebtedness* (1932) 30 MICH. L. REV. 833, 834.

and of the utter inability of local officials, for reason either of politics[3] or of downright incompetence,[4] to conduct their financial affairs efficiently,[5] early led to the adoption of statutory and constitutional debt and tax limits, debt referendum requirements, and restrictions upon the purposes for which indebtedness might be incurred.[6] But the gross inefficacy and even the viciousness of limiting tax rates and indebtedness to a designated percentage of assessed valuations has become common knowledge.[7] Such limitations are hopelessly haphazard even in theory. In prescribing uniformly for all taxing districts, or even for all those similarly classed, they disregard the infinite variations that may affect the financial requirements and resources of individual communities; in providing the same limits from year to year and from decade to decade, they ignore wide fluctuations in economic conditions and the steady increases in municipal functions demanded by rising standards of living. The attempted uniformity and inflexibility of these provisions becomes even more incongruous in the light of variations in assessment bases between cities and from time to time within a single city. Moreover, the absence of relationship between assessed valuations on the one hand and a municipality's need for improvements, its ability to finance them, and its ability and willingness to repay upon the other, renders such restrictions wholly arbitrary; necessary and proper investments are as much precluded as are waste and extravagance.[8] If the limits are too high, they constitute an invitation to levy the maximum of taxes and to incur the maximum of indebtedness. If too low they lead to evasions and subterfuges, chief of which have been the multiplication of taxing districts within the same geographical boundaries;[9] new avenues are thereby opened to mismanagement of local finances and abuse of local credit, and tax burdens are raised to impossible heights. Yet when taxpayers respond to the viciousness of such overlapping taxation by adopting blanket tax limits, the resulting rigidity may virtually prevent all municipal borrowing and seriously limit the ability of the city to perform essential functions of government.[10]

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3. SECRIST, AN ECONOMIC ANALYSIS OF THE CONSTITUTIONAL RESTRICTIONS UPON PUBLIC INDEBTEDNESS IN THE UNITED STATES (1914) 104; PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 19; LANCASTER, STATE SUPERVISION OF MUNICIPAL INDEBTEDNESS (1923) 97.

4. SECRIST, *op. cit. supra* note 3, at 105.

5. *Id.* Part II, c. I; LANCASTER, *op. cit. supra* note 3, at 23; Stason, *supra* note 2, at 837; PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 9, 19.

6. See INCREASES IN REVENUES, *supra* IA, at p. 929; BORROWING, *supra* IC, at p. 950. For general descriptions, citations, and criticisms see SECRIST, *loc. cit. supra* note 3; LANCASTER, *op. cit. supra* note 3, c. 2; Stason, *supra* note 2, at 837, 838, n.7; *cf.* WHITE, TRENDS IN PUBLIC ADMINISTRATION (1933) c. 5, at 50, 51, tables IV and V.

7. See especially SECRIST, *op. cit. supra* note 3, cc. 3, 4; LANCASTER, *op. cit. supra* note 3, at 31-33.

8. Debt limitations, of course, do not safeguard the character or quality of the debts. Stason, *supra* note 2, at 838.

9. See INCREASES IN REVENUES, *supra* IA, at p. 931; BORROWING, *supra* IC, at p. 954.

10. Stason, *The Fifteen Mill Tax Amendment and its Effect* (1933) 31 MICH. L. REV. 371; Sheppard, *Indiana Adopts a Tax Limit Law* (1932) 21 NAT. MUN. REV. 641.

The more or less detailed "self-executing" statutory regulations of municipal borrowing[11] which now supplement debt and tax limits in many states are subject to somewhat similar objections.[12] These "bond codes," dealing with the incurrence of indebtedness, the purposes and procedure for the issuance of local obligations, and their terms, sale, redemption and refunding, cannot be applied with the flexibility and judgment necessary for wise handling of varying municipal credit problems. Moreover, enforcement of these provisions is too frequently left to the initiative of taxpayers in securing mandamus or injunctive relief to make effective regulation possible. And even if enforced, statutes of this type obviously cannot prevent extravagance, incompetency or dishonesty upon the part of municipal officials.

The very circumstances that make both "self-executing" and statutory and constitutional provisions ineffective means of controlling local credit are the chief grounds upon which the necessity for a thoroughly flexible system of centralized administrative supervision may be established.[13] The immediate objective of any form of state control should be the giving of assurance that municipal credit will be managed upon a business rather than a political basis.[14] If this is to be done, appropriate machinery for handling details must be set up; adjustments and regulations must be adapted to individual cases; and expert judgment must be relied upon in providing suitable correctives for demonstrated evils. With these matters must be combined a careful regard for the

11. These usually constitute "municipal bond codes": ALA. CODE (Michie, 1928) §§ 2294(1)-2294(70); CAL. GEN. LAWS (Deering, 1931) acts 841-861; CAL. POL. CODE (Deering, 1931) §§ 4445-4449; FLA. COMP. LAWS (1927) §§ 3008-3042, *id.* (Supp. 1934) §§ 457 (1)-457(19), 2383(1)-2383(35a); IDAHO CODE (1932) §§ 55-201 to 55-226; KAN. REV. STAT. (1923) §§ 10-101 to 10-125, *id.* (Supp. 1933) c. 10; LA. CONST. OF 1921 (Dart, 1932) art. XIV, LA. GEN. STAT. (Dart, 1932) §§ 8854-8950; MASS. GEN. LAWS (1932) c. 44; MICH. COMP. LAWS (1929) §§ 2690-2705; MINN. STAT. (Mason, 1927) §§ 1934-1973, *id.* (Mason, Supp. 1931) c. 10; NEB. COMP. STAT. (1929) §§ 11-101 to 11-1007; N. H. PUB. LAWS (1926) c. 59; N. J. COMP. STATS. (Supp. 1924) §§ 136-4600 to 136-4600I (29); N. M. STAT. (Courtright, 1929) c. 16; N. Y. GEN. MUN. LAW (Cahill, 1930) §§ 1-55; N. C. CODE (Michie, 1931) §§ 2936-2959, *id.* (Michie, Supp. 1933) c. 56, art. 26; N. D. Laws 1927, c. 196; OHIO GEN. CODE (Page, 1926) §§ 3912-3954; OKLA. STAT. (1931) §§ 5913-5956; S. C. CODE (Michie, 1932) §§ 7319-7344; S. D. COMP. LAWS (1929) §§ 6983-7006, 7592-7611; TENN. CODE (1932) §§ 3003-3610, 3696-3708; TEX. REV. CIV. STAT. (Vernon, 1925) arts. 701-842; VT. PUB. LAWS (1933) §§ 3358-3387; VA. CODE (Michie, 1930) §§ 3079-3090a; W. VA. CODE (1931) c. 13; WYO. REV. STAT. (1931) §§ 22-1601 to 22-1621, 29-701 to 29-809, 99-1001 to 99-1024. See LANCASTER, *op. cit. supra* note 3, c. 3.

12. LANCASTER, *op. cit. supra* note 3, c. 5; Stason, *supra* note 2, at 840.

13. SECRIST, *op. cit. supra* note 3, at 117; LANCASTER, *op. cit. supra* note 3, cc. 4, 5; Stason, *supra* note 2, at 842 *et seq.*

14. LANCASTER, *op. cit. supra* note 3, at 93: ". . . by far the greater part of the problem of municipal government resembles the management of any privately owned service corporation. This is especially true of financial affairs. In selling an issue of bonds a city is forced to compete for capital in a way which differs little, if any, from the same necessity when faced by a commercial enterprise. No personal rights or questions of far-reaching importance are sacrificed by formulating the rules of public financing in conformity with the best commercial practise."

public duties of municipal government and for the rights of every creditor.[15] The experiences of England and of several Canadian provinces attest the effectiveness of administrative supervision in achieving such objectives. In England, where local credit is closely supervised by the Ministry of Health,[16] local debt defaults have apparently been unknown even during the present depression. The contrast between eastern and western Canadian provinces affords even more striking evidence. In Ontario and Quebec, where central supervision until 1930 and 1932 consisted for the most part of self-executing statutes, with only haphazard attempts[17] at some phases of administrative supervision, recent debt defaults and excessive debt burdens have been as frequent as in the United States.[18] On the other hand, some of the western provinces, such as Alberta, Manitoba and Saskatchewan, which have had complete administrative supervision for about two decades,[19] are said to be entirely free from municipal defaults.[20]

A. PRESENT ADMINISTRATIVE SUPERVISION OF LOCAL INDEBTEDNESS

Anglo-American legislative enactments dealing with administrative supervision of local credit frequently evidence a disregard of the fact that a municipality's credit standing, like that of any commercial or industrial business unit, is a product not only of its borrowing history but of all phases of its fiscal management. Supervision of local indebtedness is, however, of primary importance in the establishment of a sound municipal credit structure.

*Supervision of Incurrence of Indebtedness.* Legislation requiring municipalities to report the debts they propose to incur,[1] or those already incurred,[2]

15. SECRIST, *op. cit. supra* note 3, at 136.

16. Ministry of Health Act, 9 & 10 GEO. V, c. 21 (1919); see CHUNG CHIN TIEN, STATE SUPERVISION OVER MUNICIPAL FINANCE IN ENGLAND AND THE UNITED STATES (1930).

17. Ontario Stats. 1906, c. 31, Stats. 1917, c. 14, Stats. 1921, c. 63, §§ 1-4, Stats. 1922, c. 72, parts XII-XIV; QUEBEC REV. STATS. (1925) c. 101, c. 102, Div. XII, § 28, cc. 110, 111.

18. See (1934) 138 COM. AND FIN. CHRON. 1432 (municipal debt defaults in Ontario); (1933) 136 *id.* 3022, 3394, 3762, 4314 (municipal debt defaults in Quebec); (1933) 137 *id.* 356, 530, 1094, 1618, 2312, *semble.*

19. ALBERTA REV. STAT. (1922) c. 17, c. 20, §§ 96 *et seq.*, c. 51, §§ 151-178, c. 108, § 195, c. 110, §§ 214, 215, 220, c. 131, §§ 4-9; MANITOBA STATS. CONSOL. AMEND. (1913-1924) c. 133, §§ 21, 51, c. 135, Manitoba statistics 1926, c. 33, *id.* 1933, c. 28, § 2; SASKATCHEWAN REV. STAT. (1930) cc. 24, 29, 121.

20. PUBLIC ADMINISTRATION SERVICE No. 33, *op. cit. supra* note 2, at 17.

1. FLA. COMP. LAWS (1927) §§ 5106-5107 (special debt report); IND. ANN. STAT. (Burns, 1926) § 14240 (special debt report); IOWA CODE (1931) §§ 365, 366 (special debt report); KAN. REV. STAT. (1923) §§ 10-107 to 10-111 (bond registration; such report as state auditor may require); MASS. GEN. LAWS (1932) c. 44, § 24 (special financial report); MICH. COMP. LAWS (1929) § 2698 (special debt report), amended Acts 1931, no. 142; MINN. STAT. (Mason, 1927) § 2225 (bond registration); MO. REV. STAT. (1929) §§ 2914-2921 (bond registration); NEB. COMP. STAT. (1929) § 11-117 (bond registration); N. C. CODE ANN. (Michie, 1931) §§ 2492(9)-2492(11) (special financial reports); PA. STAT. ANN. (Purdon, 1931) tit. 53, § 1953 (special debt report); TEX. REV. CIV. STAT. (Vernon, 1925) arts. 709-715 (special debt report; bond registration); W. VA. CODE (1931) c. 13, art. 1, § 25 (such report as Attorney General may require); WIS. STATS. (1931) § 67.02 (report of proceedings).

2. COLO. COMP. LAWS (1921) § 312 (periodical financial reports); CONN. GEN. STAT.

to a central administrative authority has been enacted in a relatively large number of states.[3] Such reports, though they can operate only indirectly in deterring unwise incurrence of indebtedness, afford wholesome publicity regarding a city's financial condition; some of them, moreover, may prove to be of considerable value as a basis for more direct supervision of indebtedness[4] and as a guide to the formulation of the state's local credit policy.[5] A more effective method of securing the adoption of sound policies in municipal borrowing without active state intervention in local affairs has been found by a few states in the establishment of an advisory commission. Thus, the North Carolina[6] and Pennsylvania[7] legislatures have directed their state administrative bodies to proffer advice, service and cooperation to municipalities in financial matters.[8] Such assistance should be welcomed by local officials,[9] but in many instances it will be ignored. A few states, without authorizing independent determination of the propriety of proposed borrowings, permit a review of the actions of local officials when a designated number of taxpayers allege misconduct. In Indiana,[10] for example, ten taxpayers, and in Utah[11] 10 per cent of

(1930) § 1093 (periodical financial reports); IDAHO CODE ANN. (1932) §§ 55-301 to 55-305 (debt report, 30 days after sale of bonds); KAN. REV. STAT. (1923) § 10-1007 (periodical debt reports); MASS. GEN. LAWS (1932) c. 44, § 28 (special debt report); MICH. COMP. LAWS (1929) § 2697 (periodical financial reports); NEB. COMP. STAT. (1929) § 11-108 (special debt reports); N. J. COMP. STAT. (Supp. 1924) §§ 192-12, 192-13 (periodical financial statements), *id.* (Supp. 1930) § 136-4600 I (12) (periodical debt statements); N. Y. GEN. MUN. LAW (Cahill, 1930) §§ 30-38 (periodical financial reports); N. C. CODE ANN. (Michie, 1931) §§ 2492(29), 2492(31) (periodical debt reports); ORE. CODE ANN. (1930) §§ 67-328 to 67-330 (periodical debt reports); S. C. CODE (Michie, 1932) §§ 7332, 7333 (special debt reports); TEX. Laws 1931, c. 230 periodical debt reports).

3. Several of these statutes also include provisions for the discovery, collection, compilation, recording and publication of municipal debt and general financial data by central state authorities. MASS. GEN. LAWS (1932) c. 44, § 44; MICH. COMP. LAWS (1929) § 2697; N. C. CODE ANN. (1931) § 2492 (21); ORE. CODE ANN. (1930) §§ 67-328 to 63-330, § 69-1205; PA. STAT. ANN. (Purdon, 1931) tit. 71, § 334; WIS. STAT. (1931) § 73.03 (14a). See also the material in Haygood, *State Control of Local Expenditures Through Centralization of Financial Statistics* (1933) 11 TAX MAG. 301, 346.

4. Most of the statutes requiring reports of proposed borrowings are coupled with provisions making administrative approval a prerequisite to incurrence of indebtedness. See statutes cited in note 1, *supra,* with the exception of those of Minnesota and Wisconsin.

5. LANCASTER, STATE SUPERVISION OF LOCAL INDEBTEDNESS (1923) 56.

6. N. C. CODE ANN. (Michie 1931) § 2492(3).

7. PA. STAT. ANN. (Purdon, 1931) tit. 71, § 334.

8. Similar provisions are found in MASS. GEN. LAWS (1932) c. 44, § 37 ("advice and assistance"); S. C. Acts 1933, no. 231; *cf.* Manitoba Stat. 1926, c. 33, § 58(1); Ontario Stat. 1932, c. 27, § 78(9).

9. CLARK, THE INTERNAL DEBTS OF THE UNITED STATES (1933) 286; Stason, *State Administrative Supervision of Municipal Indebtedness* (1932) 30 MICH. L. REV. 833.

10. IND. ANN. STAT. (Burns, 1926) §§ 14240, 14241. A similar provision, but by court review, is found in Kan. Laws 1933, c. 319, §§ 5, 6.

11. Utah Laws 1931, c. 53 (but providing only for publication of review findings); *cf.* proposed Utah Constitutional Amend. (1930) art. XIII, § 11, in Utah Laws (Sp. Sess.) 1930, p. 23. In Iowa the state authority may now pass only upon questions of legality and power, and its disapproval may be obviated by popular referendum. IOWA CODE (1931) §§ 363-367.

the total number, may petition the administrative agency to review the legality and wisdom of proposed bond issues. In these proceedings the administrative body is apparently confined to the issues raised by the petition, and the burden is upon the taxpayers to establish the truth of their allegations. Such a review would seem adapted particularly to investigations upon the more limited questions of alleged violations of bond codes, fraud, and abuse of discretion.[12]

Thorough-going supervision of the incurrence of local indebtedness can be obtained only if the administrative body is empowered actually to substitute its judgment for that of municipal officials. But while this more drastic method of supervision is becoming more common, most of the statutes still permit administrative consideration only of the legality of a proposed borrowing, seeking merely to secure validation of the bonds before issuance.[13] Administrative action is the typical method;[14] but since validation is largely a matter of law, some legislatures have delegated it to the courts, to be exercised either by judicial review of the administrative authority's decision[15] or by direct jurisdiction in the first instance.[16] Recently, however, a number of legislatures, following the example of several Canadian provinces,[17] have substituted adminis-

12. Stason, *supra* note 9, at 845, 847, 855; *cf.* CLARK, *op. cit. supra* note 9, at 285.

13. FLA. COMP. LAWS (1927) §§ 5106-5129; GA. CODE ANN. (Michie, 1926) §§ 445-462; IOWA CODE (1931) §§ 364-366 (objection may be filed by 5 or more taxpayers; budget director to hold hearing, approve or modify issue; decision appealable); KY. STAT. (Carroll, Supp. 1933) §§ 186c-6, 186c-7; MASS. GEN. LAWS (1932) c. 44, § 24; MICH. COMP. LAWS (1929) § 2698, Acts 1931, no. 142; MO. REV. STAT. (1929) § 2915 (state auditor's certification to be only prima facie evidence of legality; appealable), §§ 2926-2930 (municipality may get pro forma decree from circuit court as to validity of proposed issue; decree appealable), §§ 6254-6257 (circuit judge to approve legality of ordinance providing for bond issue); MONT. REV. CODE (1921) § 7211; NEB. COMP. STAT. (1929) § 11-117; NEV. COMP. LAWS (Hillyer, 1929) §§ 8030, 8031, 8066; N. J. Stat. Serv. (1931) § 136-4600 I (11)c-(11)e (certificate by Commissioner of Municipal Accounts is conclusive); N. M. STAT. ANN. (Courtright, 1929) § 33-3802; N. Y. GEN. MUN. LAW (Cahill, 1930) §§ 22-29; N. C. CODE ANN. (Michie, 1931) §§ 2492(1)-2492(14) (Local Government Commission, state-appointed, to certify to validity of bond issues; decision may be overruled by voters; approval of commission not to be regarded as approval of legality of issue); OKLA. CONST. art X, § 29, OKLA. STATS. (1931) § 5934; PA. STAT. ANN. (Purdon, 1931) tit. 53, §§ 1951-1955, 1960-1967; S. C. Acts 1933, no. 299; TEX. REV. CIV. STATS. (Vernon, 1925) arts. 709-715; W. VA. CODE (1931) c. 13, art. 1, §§ 25-30 (Attorney General to approve or disapprove validity of bond issue; appeal to supreme court on petition by interested party); WYO. CONST. art. XVI, § 8. *Cf.* Ontario Stats. 1932, c. 27, §§ 84-86; SASKATCHEWAN REV. STAT. (1930) c. 29.

14. See, in note 13, *supra,* statutes of Iowa, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, West Virginia, and Wyoming.

15. See, in note 13, *supra,* statutes of Missouri, Nevada, Pennsylvania, Texas, and West Virginia.

16. See, in note 13, *supra,* statutes of Florida, Georgia, Kentucky, Missouri, Montana, Nevada, New York, and Oklahoma.

17. ALBERTA REV. STAT. (1922) c. 20, § 96 *et seq.* (approval required for issuance of municipal debentures); Manitoba Stats. 1926, c. 33, §§ 59-64 (provincial board to consider nature and object of proposed expenditure and its expediency and necessity, as well as the financial condition of the municipality, and to disallow the borrowing or issuing of deben-

trative for local discretion even as respects the wisdom and expediency of the incurrence of local indebtedness. This substitution is sometimes limited to certain classes of obligations, such as temporary emergency borrowings,[18] borrowings in excess of debt limits[19] or beyond the current budget and tax levy,[20] or indebtedness incurred to offset tax delinquencies.[21] But Connecticut and North Carolina have made the supervision more extensive. In the former state an Emergency Relief Commission,[22] appointed by the governor for two years, must approve the issuance and terms of all municipal bond issues. North Carolina's Local Government Commission[23] is directed to examine into the necessity for, and expediency and feasibility of all proposed issues of bonds, notes and other securities. If it disapproves the issuance, it must then grant a hearing at which the city's officials, citizens and taxpayers may be heard, and thereafter must make public its reasons for disapproving the incurrence of all or part of the proposed indebtedness. An adverse decision by the commission may be overridden by a referendum[24] of the city's voters.[25] Similar substitution of administrative discretion is provided in some states only upon certain con-

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tures, or permit it in such amount and on such terms as is deemed wise); Ontario Stats. 1932, c. 27, §§ 78-87 (similar to Manitoba); Quebec Stats. 1931-32, c. 56, §§ 24-30 (approval, based on examination of objects, necessity and expediency of incurring indebtedness and on financial condition of municipality, required for all borrowing), *id.* 1933, c. 50, § 3 (Municipal Commission may authorize temporary loans, specifying conditions and terms); SASKATCHEWAN REV. STAT. (1930) c. 29 (similar to Ontario and Manitoba); *cf.* 38 & 39 Vict. c. 55, § 233 (1875) (approval by Minister of Health of notes issued by municipalities to pay costs incurred under Sanitary and Health Acts).

18. NEV. COMP. LAWS (Hillyer, 1929) § 3020 (board may also determine interest rates); *cf.* MANITOBA STAT. CONSOL. AMEND. (1924) c. 133, § 51 (unusual expenditures); Quebec Stat. 1933, c. 50, § 2 (promissory notes over $100).

19. R. I. Acts and Resolves 1933, c. 2028; Pa. Pub. Laws 1933, nos. 249, 250 (court to approve temporary loans beyond debt limit); *cf.* N. Z. Pub. Acts 1921-22, no. 36, § 7 (in case of emergency, Minister of Internal Affairs may authorize borrowing beyond debt limits).

20. ARIZ. REV. CODE (Struckmeyer, 1928) § 3099 (emergency bonds or warrants).

21. OHIO GEN. CODE (Page, Supp. 1933) § 2293(5d)-(5e) (approval to be based on finding of inability to finance essential functions by other means, compliance of budget with tax limits, and certain percentage of delinquency; amount of bonds to be determined by administrative agency); PA. STAT. ANN. (Purdon, Supp. 1933) tit. 53, §§ 1896-1901 (absolute necessity to be basis for approval of borrowing up to amount of delinquent taxes); *cf.* Manitoba Stat. 1926, c. 33, §§ 93-97 (issues of debentures to cover shortage in assets caused by compromise of tax arrears and penalties).

22. CONN. GEN. STAT. (Supp. 1931-33) c. 32a, § 89b.

23. N. C. CODE ANN. (Michie, 1931) § 2492(9)-2492(12).

24. But probably the voters would ordinarily uphold the decision of the administrative body. See WHITE, TRENDS IN PUBLIC ADMINISTRATION (1933) 51.

25. Compare the elaborate procedure set forth in N. Z. Pub. Acts 1926, no. 60 (Local Government Board to investigate all proposals for local borrowing, disapproving altogether or sanctioning all or part and referring back for modification; after approval has been obtained, referendum is required; if vote is favorable, Governor General's consent is required, and he may alter interest rate or other terms).

ditions,[26] or only for some classes of local governments.[27] Appeals to the courts from these administrative decisions are frequently allowed.[28]

*Supervision of Sale of Obligations, Use of Proceeds, and Redemption.* But the necessity for, and the legality and wisdom of incurrence of indebtedness constitute only one aspect of local borrowing. Administrative supervision of the sale of municipal bonds and of disbursement of proceeds is virtually unknown in the United States, although considerable political patronage may be dispensed in the appointment of a city's financial agents and in the spending of borrowed money. North Carolina[29] has sought to obtain the most favorable market possible for local securities by delegating the sale of them to the Local Government Commission; Connecticut[30] has adopted a less direct method of supervision in requiring local governments to report the conduct of their financing to the state authority.[31] The latter state also requires reports[32] upon the disbursement of bond sale proceeds.[33] Supervision of the levy and collection of local debt service taxes, of the creation, maintenance and management of sinking funds, and of disbursements for payment of interest and principal is more common, probably because these matters of redemption so directly affect municipal credit. Assurance that debt service taxes will be levied and collected

26. IND. ANN. STAT. (Burns, 1926) §§ 14240, 14241 (unless more than 5% interest is to be paid, administrative approval required only upon appeal of ten taxpayers); TEX. REV. CIV. STAT. (Vernon, 1925) art. 752 (d)-(i) (administrative authorization of referendum and determination of proper amount and terms of bond issue required only upon appeal of fifty taxpayers); N. H. Laws 1933, c. 63 (municipality in financial distress authorized to secure governor's consent to issuance of state-guaranteed bonds and notes).

27. NEV. COMP. LAWS (Hillyer, 1929) § 8066 (approval required for issuance of construction bonds by local improvement districts); N. M. Laws 1931, c. 119 (State Board of Education must approve issuance of school district bonds); S. C. Acts 1933, no. 299, § 11 (approval of state sinking fund commission required for municipal public service system bond issues which are to be payable solely out of revenue); WYO. REV. STAT. (1931) §§ 87-124 to 87-127 (District Court to approve all borrowing and debt incurrence by commissioners of power districts). *Cf.* N. Z. Pub. Acts 1927, no. 74 (necessity for, and expediency of borrowing by borough council in anticipation of revenues to be determined by Local Government and Loans Board, which may impose conditions as to repayment of any amount borrowed in excess of statutory limitations).

28. E.g., Kan. Laws 1933, c. 319, § 6; *cf.* SASKATCHEWAN REV. STAT. (1930) c. 29, § 81. But see IND. ANN. STAT. (Burns, 1926) § 14240.

29. N. C. CODE ANN. (Michie, 1931) § 2492 (15)-(18).

30. CONN. GEN. STAT. (Supp. 1933) c. 32a, § 89b.

31. See also COLO. COMP. LAWS (1921) § 2079 (approval required of rescission of unsold bonds by irrigation districts); NEV. COMP. LAWS (Hillyer, 1929) § 3475 (approval required of irrigation districts' use of own bonds in paying contractors).

32. CONN. GEN. STAT. (Supp. 1933) c. 32a, § 89b.

33. *Cf.* IND. STAT. ANN. (Burns, 1926) §§ 12667, 12669, 12670 (on appeal of 25 taxpayers, state examiner may review the letting of public contracts and compliance of public improvements with specifications; he may also correct and approve proposed contracts, and may refer improprieties to the Attorney General and the grand jury for civil and criminal prosecution); N. C. CODE ANN. (Michie, 1931) § 2931 (a) (disbursements from special revolving fund, raised with consent of Local Government Commission, permitted only when approved by Commission).

is sought for creditors in some states merely by directing state or county authorities to calculate, usually on the basis of indebtedness and financial reports made to them, and to certify to municipalities, the amount or rate of taxes legitimate and necessary to meet their debt charges.[34] When local officials fail to levy and collect these taxes, state[35] or county[36] officials may be directed to do so themselves, or the courts may be authorized to appoint a receiver for the purpose.[37] A few legislatures have provided for state collection of debt service taxes at all times.[38] Creation and maintenance of sinking funds are also supervised in a number of ways, beginning with mere inclusion of reports of such funds in general financial or indebtedness statements[39] and provisions for municipalities reporting their sinking funds specially to the administrative agency.[40]

34. COLO. COMP. LAWS (1921) § 1997 (county commissioners to fix irrigation district levies for bond payments); FLA. COMP. LAWS (Supp. 1932) § 2740(16) (state board to verify to local officials amount necessary for debt service on road and bridge bonds; local officials must levy taxes for such amounts); Mo. STAT. ANN. (1932) § 2917 (State Auditor to certify annually to municipalities amounts required for bond payments); N. J. COMP. STAT. (Supp. 1924) § 192-56 (sinking fund requirements, certified to municipalities by state commissioner, to be mandatory budget items); N. C. CODE ANN. (Michie, 1931) § 2492(34) (thirty days before time for tax levy, Director of Local Government Commission to send statement to municipalities of amount to be provided by taxation and other means to pay all debt service charges during fiscal year); ORE. CODE ANN. (1930) § 69-1207 (Tax Supervisory and Conservation Commission to direct municipal tax levies within each county of 100,000 population or more); S. C. CODE (1932) § 7335 (thirty days before time for tax levy, Comptroller General to notify each municipality of debt service obligations to be met in following year); W. VA. CODE (1931) c. 13, art. 3, § 6 (State Sinking Fund Commission to notify municipalities of levy required to make sinking fund payments); *cf.* S. D. Laws 1931, c. 138, § 102 (county auditor to levy tax for interest and sinking funds of school bonds and warrants).

35. CAL. POL. CODE (Deering, 1931) § 4088; IOWA CODE (1931) § 7181; LA. GEN. STAT. (Dart, 1932) § 6781; OKLA. STAT. (1931) § 5939; W. VA. CODE (1931) c. 13, art. 1, § 20, Acts (Ex. Sess.) 1932, c. 4.

36. CAL. POL. CODE (Deering, 1931) § 4449: COLO. COMP. LAWS (1921) §§ 8370, 8378; MINN. STAT. (Mason, 1927) §§ 1836, 1945; OHIO GEN. CODE (Page, 1926) § 12300; OKLA. STATS. (1931) § 5939 (State Auditor to ascertain and to certify amount needed to county treasurer, who is to levy and collect special property tax with other county taxes); ORE. CODE ANN. (1930) § 69-1208; S. D. Laws 1931, c. 138, § 102; WASH. REV. STAT. (Remington, 1933) § 9547; WYO. REV. STAT. (1931) § 89-4517.

37. ARK. DIG. STAT. (Crawford & Moses, 1919) §§ 3633, 5451; FLA. COMP. LAWS (1927) § 1493; IOWA CODE (1931) § 12453; N. M. Laws 1931, c. 55; W. VA. CODE (1931) c. 19, art. 21, § 23; *cf.* 56 & 57 VICT. c. 54, § 12 (1875).

38. CAL. POL. CODE (Deering, 1931) §§ 3670b, 3670c (municipal debt service taxes collected by state treasurer); Mo. STAT. ANN. (1932) § 2917 (municipal debt service tax collected with state tax); *cf.* MINN. STAT. (Mason, 1927) § 2226; S. D. COMP. LAWS (1929) § 6762; VA. TAX CODE (Michie, 1930) §§ 396a, 396b (state department to appoint collectors in certain classes of cities and counties to collect certain local tax levies).

39. E.g., MICH. COMP. LAWS (1929) §§ 2697, 2698; ORE. CODE ANN. (1930) § 69-1205; Tex. Laws 1931, c. 230. See also note 2, *supra.*

40. N. J. COMP. STATS (Supp. 1924) §§ 192-5, 192-11; N. C. CODE ANN. (Michie, 1931) §§ 2492(26)-2492(29).

The New Jersey,[41] North Carolina[42] and Pennsylvania[43] central authorities are given power to examine, advise, direct, review, approve, and enforce laws dealing with the creation, maintenance and preservation of local sinking funds. In North Carolina this supervision includes determining and enforcing proper depositary requirements for all municipal funds,[44] a provision apparently made necessary by the acute banking crisis in that state. In West Virginia the State Sinking Fund Commission itself assumes the administration of municipal sinking funds.[45]

*Supervision of Payment and Refunding.* Disbursements for payment of municipal obligations and refunding operations are ordinarily controlled, if at all, only through publication of routine financial statements.[46] Special reports dealing with payments are, however, sometimes required.[47] North Carolina's commission gives thirty days' notice to all municipalities of the amount of obligations coming due and of the time and place of payment;[48] and in a few jurisdictions, state agents are designated as fiscal agents of local units of government.[49] Moreover, the necessity for careful judgment in determining whether maturing obligations can and should be met out of revenues or should be refunded, has led some jurisdictions to provide for state advice and assistance to municipal officials,[50] or for administrative determination of the legality of refunding issues.[51] And in Michigan a commission having power to forbid the issuance, in whole or in part, of bonds for this purpose must approve, on grounds of wisdom and policy, the refunding operations of any city which is in default or in danger of becoming so.[52] But legislation of this tenor is not common in the United States.[53]

41. N. J. COMP. STAT. (Supp. 1924) §§ 192-3 to 193-11.

42. N. C. CODE ANN. (Michie, 1931) §§ 2492(4), 2492(26)-2492(29).

43. PA. STAT. ANN. (Purdon, 1930) tit. 53, § 1958.

44. N. C. CODE ANN. (Michie, 1931) § 2492(30)-2492(31).

45. W. VA. CODE (1931) c. 13, art. 3.

46. See statutes cited in notes 1 and 2, *supra*.

47. MASS. GEN. LAWS (1932) c. 44, § 25 (town or district to notify director of accounts when note is paid); MO. STAT. ANN. (1932) § 2918 (municipality to certify to state auditor all bonds redeemed); N. C. CODE ANN. (Michie, 1931) § 2492(25) (municipalities to report simultaneously with remitting payment).

48. N. C. CODE ANN. (Michie, 1931) § 2492(35). A similar provision is found in S. C. CODE (1932) § 7338.

49. FLA. COMP. GEN. LAWS (Supp. 1932) §2470 (State Board of Administration is fiscal agent in disbursement of municipal road and bridge debt service funds); MINN. STAT. (Mason, 1927) § 2227 (county treasurer pays coupon holders of railroad aid bonds); NEB. COMP. STAT. (1929) § 11-101 (county treasurer fiscal agent of municipalities; all bonds payable at his office); W. Va. Acts (Ex. Sess.) 1933, c. 59 (state commission to make payments on county road bonds).

50. Ore. Laws 1933, c. 256; PA. STAT. ANN. (Purdon, 1931) tit. 71 § 334; S. C. Acts 1933, no. 231; *cf.* Manitoba Stat. 1926, c. 33, § 58(1).

51. N. M. ANN. STAT. (1927) §§ 90-1101 to 90-1104; PA. STAT. ANN. (Purdon, 1931) tit. 53, §§ 1959, 1960.

52. Mich. Acts (Ex. Sess.) 1932, no. 13, amended Acts 1933, no. 143, §§ 4, 5, 211 (the commission is to disapprove refunding issues which would not be sound municipal financing or would not accomplish the relief intended; its findings of fact are conclusive).

53. FLA. COMP. LAWS (Supp. 1932) § 2470(16) (approval necessary to issuance of re-

*Supervision of Debt Readjustments.* A subject for supervision equally important as the incurrence of obligations and provision for their redemption is the readjustment of municipal debts after default has occurred. And the lessons taught by the present depression have brought widespread legislative recognition of the fact that in dealing with this problem an administrative body may provide invaluable assistance both to a city's creditors and to its taxpayers. Several states now require administrative[54] or judicial[55] approval of plans for the readjustment of municipal obligations. But experience in other types of reorganizations has demonstrated that supervision during the formulation of the plan, rather than mere approval after its completion, is the more effective means of assuring proper regard for the interests of a city's citizens, its taxpayers and the multitude of its poorly-informed creditors.[56] Accordingly, a few legislatures have directed state authorities to assist municipal officials and to cooperate with them in every way possible in their negotiations with creditors.[57] While vigorous activity might enable state authorities, thus empowered, to guide the course of a readjustment, particularly if they made judicious use of publicity, authorization of direct intervention by the administrative body would ordinarily prove even more efficient. Such statutes now exist in New Jersey[58] and Oregon,[59] where state officials act for defaulting municipalities in the conduct of negotiations with creditors; and similar supervision is provided in several other states.[60] The Washington legislature has adopted the most log-

funding bonds in place of levy of taxes for road and bridge bonds); OHIO GEN. CODE (Page, Supp. 1931) § 2293-5 (state bureau to determine necessity for refunding bonds to be issued before June, 1933, and to set maturities therefor); Ore. Laws 1933, c. 102 (state commission to determine benefits conferred, and to permit as one alternative refunding up to this amount); *cf.* ALBERTA REV. STAT. (1922) c. 110, § 220 (provincial board must consent to extension of terms of municipal debentures); Manitoba Stats. 1926, c. 33, §§ 78, 79 (provincial board to permit extension of terms and refunding when necessary to equalize life of municipal debentures with life of improvement they financed); N. Z. Pub. Acts 1926, no. 14, § 30 (approval of issuance of consolidated debentures required); SASKATCHEWAN REV. STAT. (1930) cc. 29, 121 (similar to Manitoba's statute).

54. Ore. Laws 1931, c. 50 (irrigation district readjustments); *cf.* N. Y. proposed S. B. 1214 (1933); N. Z. Pub. Acts 1932-33, no. 41, § 9-13 (consent of Governor General required for conversion of municipal obligations into new securities with reduced interest rates; until March 1, 1935); Quebec Stat. 1933, c. 50, § 44 (commission to ratify municipal readjustment plan).

55. Idaho Laws 1933, c. 174 (drainage, irrigation and highway district readjustments); N. J. Stat. Serv. 1933, §§ 136-4700 (407) to 136-4700 (408) (court to determine whether city's readjustment plan measures its capacity to pay, and is fair both to creditors affected and to those not affected).

56. See RIGHT OF CREDITORS AFTER DEFAULT, *supra* IIB, at p. 975.

57. Ore. Laws 1933, c. 356; PA. STAT. ANN. (Purdon, 1931) tit. 71, § 334; S. C. Acts 1933, no. 231.

58. N. J. Stat. Serv. 1931, §§ 136-4700(101) to 136-4700(406).

59. Ore. Laws 1933, c. 356 (does not apply to irrigation and taxing districts); *cf.* Ore. Laws 1931, c. 50.

60. CAL. POL. CODE (Deering, 1931) § 3480c(1) (reclamation district readjustments); N. C. CODE ANN. (Michie, SUPP. 1933) §§ 2492(64)-2492(65) plan negotiated by commission at request of municipality to be submitted to latter for final acceptance), § 2492(69)

ical and complete supervision, empowering the Director of Conservation himself to decide upon a readjustment plan before making state funds available to financially distressed diking, drainage, or irrigation districts.[61] It is this type of supervision of readjustments which is most familiar in Canada.[62] Even such plenary authority cannot, of course, ordinarily enable an administrative agency in this country to enforce a readjustment plan against unwilling creditors, as is done in Canada,[63] although legislation proposed recently in New Jersey[64] in reliance upon the emergency police power[65] would attempt to grant this power.

An administrative agency charged with supervision of local indebtedness could provide assurance that the municipal debtor will comply in good faith with the terms of a readjustment plan, and that if circumstances permit or require variation from those terms, the necessary degree of flexibility will be available. Several state administrative agencies are now authorized to supervise municipal officials engaged in carrying out a readjustment plan,[66] and a variety of statutes authorize such agencies either to act as receivers[67] themselves

(commission may negotiate loan to buy up city bonds at 40% discount, and may negotiate with RFC for refinancing loans); S. C. Acts 1933, no. 231 (commission to negotiate on request of municipality); *cf.* Fla. proposed H. B. no. 150 (1933) (state board to have exclusive power to deal with defaulting city's creditors); SASKATCHEWAN REV. STAT. (1930) c. 29 (board to take such action as may be necessary).

61. Wash. Laws 1933, c. 16.

62. ALBERTA REV. STAT. (1922) c. 131, §§ 4, 5 (at request of municipality or of holders of one-fourth in value of its bonds, commission to make investigation and hold hearings and to recommend readjustment plan); Manitoba Stat. 1926, c. 33, § 72 (after inquiry and investigation, board to formulate plan of readjustment); Ontario Stat. 1932, c. 27, part IV, § 98 (board to dictate readjustment plan).

63. ALBERTA REV. STAT. (1922) c. 131, § 5 (commission's plan to be binding against municipality and all persons interested when approved by holders of three-fifths in amount of indebtedness, and by Lieutenant Governor); Manitoba Stat. 1926, c. 33, § 72 (binding when approved by holders of three-fifths in amount of debentures); SASKATCHEWAN REV. STAT. (1930) c. 116, cited in PUBLIC ADMINISTRATION SERVICE No. 33, *Municipal Debt Defaults* (1933) 55.

64. N. J. proposed S. B. no. 56 (1934).

65. Reliance has been placed principally upon Home Building and Loan Association v. Blaisdell, 290 U. S. 398 (1934), though the New York court's decision in People of New York v. Title & Guarantee Mortgage Co. of Buffalo, N. Y. Times, March 20, 1934, at 15, should prove helpful. See RIGHTS OF CREDITORS AFTER DEFAULT, *supra* IIB, at p. 969.

66. N. J. Stat. Serv. 1931, §§ 136-4700(101) to 136-4700(406); Wash. Laws 1933, c. 16, § 5, *cf.* Fla. proposed H. B. 150 (1934); N. Y. proposed S. B. 1214 (1933); ALBERTA REV. STAT. (1922) c. 131, § 6; Manitoba Stats. 1926, c. 33, § 75; Ontario Stats. 1932, c. 27, part VI, § 98-117.

67. Mass. Acts 1931, c. 44 (special Board of Finance to act as receiver for Fall River); N. H. Laws 1921, c. 226 (special finance commission to act as receiver for city of Manchester); N. J. Stat. Serv. 1931, § 136-4700(101) to 136-4700(406); *cf.* MINN. STAT. (Mason, 1927) § 1946-9 (court supervision and control of municipal affairs while municipality is attempting to reach settlement with creditors); N. D. proposed S. B. 335 (1933) (state commission to supervise expenditures of defaulting or financially embarrassed local units); Quebec Stats. 1931-1932, c. 56, §§ 32-45.

or to appoint[68] or petition a court to appoint[69] receivers, to supervise their activities by means of reports, review, approval or order,[70] and to request[71] or require[72] termination of the receivership. Receivers appointed under these statutes may have power only to operate municipal utilities,[73] or to levy and collect taxes;[74] but in some states such receivers are authorized to assume partial[75] or full[76] control over the financial affairs of the cities, or even to oust local government officials entirely.[77]

### B. Present Administrative Supervision of Local Tax Bases and of Expenditures

Even if thorough supervision of all aspects of a city's indebtedness were provided, however, the complete soundness of its credit would still not be assured. Other factors may be of equal consequence in determining the city's ability to meet its obligations. Certainly no cautious investor would lend money to an industrial or commercial corporation without first investigating, among other things, its income and expenses; and these factors also lie at the foundation of a sound municipal credit structure. Indeed, since a city ordi-

68. N. C. Code Ann. (Michie, Supp. 1933) § 2492(33); *cf.* Alberta Rev. Stat. (1922) c. 131, § 8 (Lieutenant Governor to appoint administrator); Ontario Stats. 1932, c. 27, § 91 (Municipal Board may appoint committee of supervisors to control administration of municipality).

69. Conn. Gen. Stat. (Supp. 1933) c. 32a, § 91b; Wyo. Laws 1933, c. 79; *cf.* Manitoba Stats. 1926, c. 33, § 77 (Municipal and Public Utility Board requesting Lieutenant Governor to appoint administrator).

70. Conn. Gen. Stat. (Supp. 1933) c. 32a, §§ 92b, 94b; N. C. Code Ann. (Michie, Supp. 1933) § 2492 (33) (on petition, Local Government Commission to review administrator's exercise of power); *cf.* Manitoba Stats. 1926, c. 33, § 77; Ontario Stats. 1932, c. 27, §§ 92, 93, 117.

71. Conn. Gen. Stat. (Supp. 1933) c. 32a, § 98b.

72. N. C. Code Ann. (Michie, Supp. 1933) § 2492(33); *cf.* Quebec Stat. 1931-1932, c. 56, § 37.

73. Conn. Gen. Stat. (Supp. 1933) cc. 33a, 33b; Mich. Acts 1933, no. 94, § 10; S. C. Acts 1933, no. 299, § 10; W. Va. Acts (Ex. Sess.) 1933, c. 26, § 12.

74. See note 37, *supra.*

75. N. J. Stat. Serv. 1931, §§ 136-4700(201) to 136-4700(402), *id.* 1932, §§ 136-4700(201), 136-4700(212); *cf.* N. D. proposed S. B. no. 335 (1933) (approval of municipal governing body's requisitions for funds, only in such sums as shall be proper or reasonably neccessary for ordinary expenses of government in defaulting or financially embarrassed local units).

76. Conn. Gen. Stat. (Supp. 1933) c. 32a, §§ 93b-96b; Mass. Acts 1931, c. 44; N. H. Laws 1921, c. 226; Minn. Stats. (Mason, 1927) § 1946-9; N. M. Laws 1931, c. 55, Laws 1933, c. 180; N. C. Code Ann. (Michie, Supp. 1933) § 2492(33); Ore. Laws 1933, c. 433; *cf.* Manitoba Stat. Consol. Amend. (1924) c. 133, § 21; Manitoba Stat. 1926, c. 33, § 77; Ontario Stat. 1932, c. 27, § 97; Quebec Stat. 1931-1932, c. 56, §§ 39-48.

77. Wyo. Laws 1933, c. 79 (district court may suspend commissioners of drainage or irrigation district and with consent of governor may appoint special commission to manage the district); *cf.* Manitoba Stat. Consol. Amend. (1924) c. 133, § 21; Manitoba Stats. 1926, c. 33, § 77; Victoria Stats. (1929) no. 3720, §§ 430-432.

narily has no leviable property and since operating expenses have a prior claim upon its revenues, a purchaser of its securities and others interested in its continued solvency may be especially concerned with its tax program and its budget.

Chiefly because of the state's direct interest in securing state and county taxes levied within a municipality, administrative supervision of tax bases has been more widely developed than has that of other phases of city credit.[1] Administrative bodies in some states disseminate advice on the making of local assessments,[2] endeavor to discover properties omitted from the tax rolls, and cooperate with state boards of equalization by detecting inequitable assessments and by gathering data, through reports and inspections,[3] with which more accurate valuations of property may be made.[4] Likewise, the approval of administrative agencies may be required for the bonds of local assessors, or for the removal of these officials and appointment of substitutes by local authorities, or for the omission of property claiming tax exemption for the first time.[5] In several jurisdictions central authorities also review[6] assessments in order to secure equalization between taxing districts and between different classes of property, and establish uniform systems of assessment books and entries therein.[7] State appointment of local tax assessors is provided only infrequently.[8]

Administrative supervision of local expenditures is quite uncommon.[9] It most frequently appears in the requirement of periodical or special financial reports to central authorities,[10] who may give due publicity to municipal expenditure programs. A proper economy is sought in many states through control over municipal budgets and so over the tax levies. Yet ordinarily such control goes no further than administrative prescription of mandatory forms

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I-B

1. WALLACE, STATE ADMINISTRATIVE SUPERVISION OF CITIES IN THE UNITED STATES (1928) 64-91; see also WHITE, RECENT TRENDS IN PUBLIC ADMINISTRATION (1933) 57-63.

2. This is done through correspondence, pamphlet and newspaper publicity, personal inspections and conferences. WALLACE, *op. cit. supra* note 1, at 71-73.

3. *Id.* at 66; see Cal. Laws 1931, c. 694.

4. WALLACE, *op. cit. supra* note 1, at 64, 65, 67.

5. *Id.* at 74.

6. *Id.* at 74-77; see also Utah Laws 1931, c. 53; W. Va. Acts 1932 (Ex. Sess.), c. 4; WIS. STAT. (1931) § 73.03; *cf.* Alberta Stat. 1929, c. 47; MANITOBA STAT. CONSOL. AMEND. (1924) c. 132.

7. WALLACE, *op. cit. supra* note 1, at 83-87; see also Cal. Laws 1931, c. 694.

8. WALLACE, *op. cit. supra* note 1, at 87-89; *cf.* Ohio Laws (1913), p. 786, repealed by Laws 1915, p. 246; KY. STAT. (Carroll, 1930) § 4042a-11. But provision for the removal of delinquent local assessors by or through the intervention of state authorities is not uncommon. WALLACE, *op. cit. supra* note 1, at 89; see also MICH. COMP. LAWS (1929) § 3545.

9. Kilpatrick, *Evolving Plans for Review of Local Expenditures* (1933) 18 BULL. OF NAT. TAX ASS'N. 130.

10. See PRESENT ADMINISTRATION SUPERVISION OF INDEBTEDNESS, *supra* IIIA, at notes 1, 2.

for the budgets of all[11] or of certain classes[12] of municipalities; provisions of this character become more effective when there is added a requirement that copies of the budgets be filed with state authorities for purposes of record and publicity.[13] In a few states, however, supervision of local budgets and tax levies extends to substance as well as to form. Thus the services and advice of central administrative authorities are in some jurisdictions made available to local officials engaged in formulating budgets.[14] In New Jersey[15] and New Mexico[16] state authorities examine local budgets for inclusion of mandatory items, correctness of form, and conformity of expenditures with budget estimates. And several legislatures have made municipal budgets reviewable by central authorities and subject to revision and modification by them upon questions of legality[17] or policy,[18] or have even required administrative approval

11. ARIZ. REV. CODE (Struckmeyer, 1928) §§ 3097-3099; IND. STATS. ANN. (Burns, 1926) §§ 12636-R 64; IOWA CODE (1931), §§ 368-390, Laws 1933, c.c. 13, 14; KAN. REV. STAT. (Supp. 1933) §§ 79-2925 to 79-2937; Mich. Acts 1933, no. 62, §§ 9, 10; MISS. CODE (1930) §§ 3970-3977, Mont. Laws 1929, c. 148, Laws 1931, c. 121; NEV. COMP. LAWS (Hillyer, 1929) §§ 3018-3025; N. J. COMP. STAT. (Supp. 1924) §§ 192-1 to 192-40; N. M. STAT. ANN. (Courtright, 1929) §§ 33-5901 to 33-5908; N. C. CODE (Michie, 1931) §§ 1334(53)-1334(76), 2969(n)-2969(q); N. D. COMP. LAWS (Supp. 1925) §§ 3314a(1)-3314a(12), 3684a(1)-3684a(13), Laws 1931, c. 199; OHIO GEN. CODE (Page, Supp. 1933) §§ 5625-19 to 5625-33; OKLA. STATS. (1931)) §§ 12305-12315, 12674-12679; ORE. CODE (1930) §§ 69-1101 to 69-1115, Laws 1931, c. 161; TEX. REV. CIV. STATS. (Vernon, Supp. 1933) arts. 689a(9)-689a(20); Utah Laws 1927, c.c. 54, 75, 76; VA. CODE (Michie, 1930) §§ 2577(i)-2577(o); WASH. REV. STAT. (Remington, 1933) §§ 3997-1 to 3997-10, 9000-1 to 9000-24; W. VA. CODE (1931) c. 11, art. 8, §§ 3, 5, 7.

12. ALA. CODE (Michie, 1928) § 6789; CAL. POL. CODE (Deering, 1931) § 3714; FLA. COMP. GEN. LAWS (1927) §§ 2302-2308; FLA. COMP. GEN. LAWS (Supp. 1934) §§ 2306, 2308(1); IDAHO CODE ANN. (1932) §§ 30-1201 to 30-1213; KY. STAT. (Carroll, Supp. 1933) §§ 938h-33 to 938h-62; MASS. GEN. LAWS (1932) c. 44, §§ 32-34; N. H. PUB. LAWS (1926) c. 42, § 74; N. Y. 2d CLASS CITIES LAW (Cahill, 1930) § 75, Laws 1932, c. 634, §§ 110-121; S. D. COMP. LAWS (1929) §§ 6955A-6955J; WIS. STATS. (1931) §59.84. Provisions for recommendary prescription of local budget forms are found in CONN. GEN. STATS. (1930) § 390; WIS. STATS. (1931) §§ 65.01-65.10. See in regard to these statutes and those in note 11, *supra*, WHITE, *op. cit. supra* note 1, at 66.

13. CAL. POL. CODE (Deering, 1931) § 3714; FLA. COMP. GEN. LAWS (Supp. 1934) § 2306; IOWA CODE (1931) § 383; Mich. Acts 1933, no. 62, § 10; N. M. STATS. ANN. (Courtright, 1929) § 33-5901; OKLA. STATS. (1931) §§ 12305, 12306. TEX. REV. CIV. STATS. (Vernon, Supp. 1933) arts. 689a(11), 689a(13); VA. CODE (Michie, 1930) § 2577(m2); WASH. REV. STATS. (Remington, 1933) §§ 3997-4, 9000-4.

14. N. M. STATS. ANN. (Courtright, 1929) § 141-507(8); N. C. CODE (Michie, 1931) § 2492(3), Laws 1927, c. 91; PA. STATS. ANN. (Purdon, 1931) tit. 71, § 334; S. C. Acts 1933, no. 231. *Cf.* MANITOBA STATS. (1926) c. 33, § 58(1); Ontario Stats, 1932, c. 27, § 78(a).

15. N. J. COMP. STAT. (Supp. 1924) § 192-3.

16. N. M. COMP. STAT. (Courtright, 1929) § 33-5905.

17. Ore. Laws 1931, c. 161.

18. IND. STATS. ANN. (Burns, Supp. 1929) § 14239, Acts 1931, c. 78, §§ 3, 5, Acts 1932, c. 10, § 4; OHIO GEN. CODE (Page, Supp. 1932) § 5625-28; Ore. H. B. no. 273 (1933) (proposed); Wyo. S. B. no. 38 (1933) (proposed).

of such budgets, again either upon legality alone[19] or upon legality and policy.[20] Moreover, state authorities, regularly or contingently, may certify tax levies which may become mandatory budget items[21] or which may be otherwise determinative of municipal tax levies.[22] While administrative review and approval of local contracts and public improvements would presumably afford the most complete state control over local expenditures, this form of supervision is almost unknown in the United States.[23]

### C. Present Administrative Supervision of General Fiscal Management

The keeping of books and accounts which show accurately and clearly the amount and present condition of a city's assets; the amount and maturity of outstanding obligations, as well as current revenues and operating expenses; the synchronization between fiscal years and tax collections; the methods used in collecting taxes and in handling and checking disbursements; the efficiency with which public properties are managed—these and similar matters of fiscal organization and practice are essential elements in sound municipal credit. For while they involve only procedure and form, they may provide opportunity for many unnecessary extravagances. Canadian legislatures have deemed these matters so important that they have authorized central administrative agencies themselves to assume managerial responsibility where local officials have failed to reform their financial practices.[1] In the United States, however, supervision

19. Colo. Comp. Laws (1921) § 7216; Iowa Code (1931) § 373; Kan. Rev. Stat. (1923) § 79-1942; Utah Laws 1923, c. 68.

20. Fla. Comp. Laws (Supp. 1934) §§ 2383(36)-2383(131); Ky. Stats. (Carroll, Supp 1933) § 938h-38; Mass. Acts 1933, c. 307; Minn. Stats. (Mason, Supp. 1931) § 1946-26½; N. M. Comp. Stats. (Courtright, 1929) §§ 33-5904, 141-507(8); Ore. Code (1930) §§ 69-1203 to 69-1207; Utah Laws (Sp. Sess.) 1930, p. 23 (proposed Amend. Const. Art. XIII, § 11); Wyo. Rev. Stat. (1931) § 87-120.

21. N. J. Comp. Stat. (Supp. 1924) § 192-56.

22. See Present Administrative Supervision of Local Indebtedness, *supra* IIIA, note 34.

23. Ind. Ann. Stat. (Burns, 1926) § 12667 (upon petition state examiner may cause all plans and specifications to be submitted to him for inspection and approval before contracts are awarded), § 14241 (on petition; state board of tax commissioners to approve both as to legality and policy, proposed municipal improvements); Iowa Code (1931) §§ 351-358 (on appeal of taxpayers, legality of contract for municipal improvement for over $5000 must be approved by director of State Appeal Board), § 359 (municipality must have approval for expenditure for public improvement of more than 5% over contract price).

1. Alberta Rev. Stat. (1922) c. 17, § 15 (ouster of local governing authorities who fail to correct financial practices and organization disapproved by Minister of Department of Municipal Affairs, and replacement by appointive administrator); Manitoba Stat. 1926, c. 33, § 58(3) (after investigation into financial affairs of municipality, central board may, if necessary, take general supervision to insure proper organization and financial practices); Saskatchewan Rev. Stat. (1930) c. 24, § 17 (if inspector reports municipal affairs to be in undesirable condition and municipal council does not remedy such condition in 60 days, Department of Municipal Affairs will take over management of the matter).

of this type is rare;[2] most of the states rely merely upon publicity given to the financial statements and statistics reported to administrative agencies.[3] New Jersey's state commission licenses municipal accountants or auditors[4] and receives reports from them,[5] and the Local Government Commission in North Carolina advises local officials on auditing and also on other questions of fiscal organization and practice.[6] Supervision more nearly resembling that provided for in Canada is found in statutes authorizing central administrative agencies to aid in the installation of local accounting systems, or to approve, prescribe, or themselves install such systems,[7] and by other statutes empowering state officials to audit local accounts in order to determine the legality and accuracy of methods used.[8]

## IV

## ESTABLISHMENT OF EFFECTIVE SUPERVISION OF LOCAL CREDIT

### A. Extent of Necessity for Effective Administrative Supervision

It is apparent from the character and distribution of the statutes providing for administrative supervision of local financial affairs that in the United States there has been little recognition by legislatures of the variety of problems comprehended within the subject of municipal credit. Some of the different aspects of local finance are in many states without any, or any but the weakest, central administrative supervision. And even where such supervision is relatively exhaustive, the exercise of it is usually so distributed among various central officers or bodies, each charged with looking after a separate function, that organization for, or conscious dedication to a planned program of local

2. The only statute of this type appears to be Minn. Stat. (Mason, 1927) § 6954; *cf.* N. C. Code Ann. (Michie, 1931) § 1302(17).

3. See Present Administrative Supervision of Local Indebtedness, *supra* IIIA, notes 1, 2. Administrative authorities also effect some supervision over local practices through their compilations of financial data and statistics. See Haygood, *State Control of Local Expenditures Through Centralization of Financial Statistics* (1933) 12 Tax Mag. 301, 346.

4. N. J. Comp. Stat. (Supp. 1924) § 192-69.

5. N. J. Comp. Stat. (Supp. 1924) § 192-71. A similar provision is found in N. C. Code Ann. (Michie, 1931) § 1334(80).

6. N. C. Code Ann. (Michie, 1931) §§ 1302(14), 1334(77); *cf. id.* § 1334(81) (commission to approve bills for services of local auditors). Pennsylvania also provides state guidance in general fiscal management. Pa. Stat. Ann. (Purdon, 1931) tit. 71, § 334.

7. For analysis and collection of statutes, see Wallace, State Administrative Supervision Over Cities in the United States (1928) 91 *et seq.*; White, Trends in Public Administration (1933) 63-66, table IX. See also, as illustrative, Ore. Code Ann. (1930) § 69-1205; *cf.* Alberta Rev. Stat. (1922) c. 17; Manitoba Stats. 1926, c. 33, § 58; Ontario Stats. 1932, c. 27, §§ 60-67; Saskatchewan Rev. Stat. 1930) c. 24.

8. For analysis and compilation of statutes, see Wallace, *op. cit. supra* note 7, at 91-96; White, *op. cit. supra* note 7, at 67, table X. See also, e.g., Pa. Stat. Ann. (Purdon, 1931) tit. 71, § 334; *cf.* Statutes of Alberta, Manitoba, Ontario, and Saskatchewan cited in note 7, *supra*; 3 Victoria Stat. (1929) no. 3720, §§ 461, 462.

credit is lacking.[1] Yet completely effective supervision must extend to all of the controllable elements in local activity which determine or affect municipal credit; it must be of such positive nature[2] as to control even local discretion; and, as a matter of internal efficiency, it must be carefully coordinated in all of its phases. Continental European countries, unhampered by concepts of local autonomy, have adopted similar highly centralized control of local credit. Thus the French commune is subject to central administrative guidance upon all matters of local finance;[3] and in Germany, the financial and other activities of local governments are strictly regulated under a system of central administrative supervision.[4] In the United States coordinated central control of this character may best be effected through allocation of responsibility for all phases of local credit to a chief administrative body,[5] or to a special department of the state government.[6]

The diversity of economic, social and political conditions in different parts of this country, however, precludes advocacy of a single system of administrative supervision of local credit. The more than two thousand units of local government that have defaulted on their obligations during recent years unquestionably present a problem of vital public importance. Nevertheless, it must be remembered that default is still the exception rather than the rule, for the total number of tax levying governmental units in the United States exceeds two hundred thousand.[7] Baltimore, Cincinnati and Providence afford conspicuous examples of solvent, well-managed municipalities. When all or most of the taxing districts within a state have thus demonstrated a capacity to take care of their own financial affairs, extensive and restrictive state interference would be unwise as well as unnecessary.[8] It does not follow, however, that there is no place for administrative supervision even in these states. The generalization is warranted that every state would profit from the establishment of a system whereby local officials reported financial statements to a state administrative agency, and the latter, in addition to collecting and publishing this and other financial data, made available competent advice and

1. Coordination of administrative supervision of the various financial activities of municipalities in the United States seldom goes beyond that inherent in the supervising officials' or agencies' membership in the state government.

2. For a description of the processes of administrative supervision through which control may be achieved see WALLACE, STATE ADMINISTRATIVE SUPERVISION OVER CITIES IN THE UNITED STATES (1928) c. 2.

3. GOOCH, REGIONALISM IN FRANCE (1931).

4. BLACHLY AND OATMAN, THE GOVERNMENT AND ADMINISTRATION OF GERMANY (1928).

5. See N. C. CODE ANN. (Michie, 1931) §§ 1302(14)-1302(16), §§ 2492(1)-2492(61). Indiana's Tax Commission is comparable. IND. STAT. ANN. (Burns, 1926) §§ 14209-14244; Acts 1931, c. 78; Acts 1932, c. 10; Acts 1933, c. 97.

6. Canadian provinces achieve a high degree of coordination by departmental organization of the various supervisory agencies. Alberta and Saskatchewan have a Department of Municipal Affairs; Manitoba, a Municipal Commissioner's Department; and Quebec a Ministry of Municipal Affairs.

7. For summary of statistics, see INTRODUCTION, *supra*.

8. *Cf.* Wallerstein, *What Local Officials Think of State Financial Control* (1932) 21 NAT. MUN. REV. 557 (Virginia municipalities).

assistance regarding matters pertinent to municipal credit. Supervisory machinery of this type could hardly offend local autonomy; yet it would not only afford valuable aid to local officials, and permit attainment of a degree of uniformity in financial matters throughout the state that would not otherwise be possible, but it would also satisfy the state-wide interest normally to be expected in the credit standing of every unit of local government. Moreover, this minimum of administrative supervision of local credit would be particularly desirable if the central agency were given power to take prompt control of the affairs of any governmental unit which defaults on its obligations or is in serious financial straits.[9] A large and populous state cannot count upon complete freedom from local defaults, even if at present it is able to boast a generally high municipal credit rating. Indeed, even if competent city administrations survive the fortunes of politics, defaults may be compelled by catastrophe or prolongation of the depression.

The wisdom of providing in advance for administrative supervision of the affairs of a defaulting municipality has been demonstrated.[10] A state commission already fully informed of the city's financial history and of its present condition, and equipped with adequate information as to the names and classes of its creditors, may take action promptly upon determination that a default is inevitable. If responsibility for the formulation of a readjustment plan is lifted from the "honestly selfish" representatives of creditors and delegated instead to the administrative agency, many of the delays that are all too familiar to equity reorganizations may be avoided. Even if the plan is worked out through the familiar bargaining with creditors, however, the authority of the state agency to act for the municipal debtor lends assurance that neither the city nor the multitude of its creditors will be improperly imposed upon either because of lack of bargaining power or for want of adequate information. Excessive costs may be avoided through the speeding up of the readjustment and through administrative determination of reasonable allowances for fees. Moreover, the state's administrative agency could supervise the operation of a readjustment plan with the greatest degree of effectiveness. Thus if a change in conditions should make possible a fuller or more prompt payment than had been anticipated, the state authorities would learn of that fact and compel the city to make the payment. On the other hand, the supervisory agency could reserve to itself authority to sanction a temporary relaxation of the terms of a readjustment plan in the interest of the public if the demands of an emergency made literal enforcement undesirable. And finally, the supervision thus provided could guarantee that the defaulting city would not return to improper financial practices and that steps would be taken to place its credit structure upon a sound basis.

It thus seems clear that every state should establish a permanent administrative agency which not only is equipped and authorized to cooperate with and

9. See CLARK, THE INTERNAL DEBTS OF THE UNITED STATES (1933) c. 9, 277 *et seq.*; Stason, *State Administrative Supervision of Municipal Indebtedness* (1932) 30 MICH. L. REV. 833, 858.

10. See RIGHTS OF CREDITORS AFTER DEFAULT, *supra* IIB, at p. 974 *et seq.*; PRESENT ADMINISTRATIVE SUPERVISION OF LOCAL INDEBTEDNESS, *supra* IIIA, at p. 989.

assist local financial officials, but which also has power to intervene promptly and take immediate control of a taxing district that by its default has shown itself presumptively unable to maintain its own credit standing. Supervision of this character, however, is a minimum which would hardly suffice in most states to restore or to protect sound municipal credit. It does not take many instances of poor credit management within a jurisdiction to warrant prompt state intervention in the affairs of all local governments; especially is this true where large cities become financially embarrassed. Indeed, the depression has demonstrated that in many jurisdictions the state itself must assume full responsibility for placing local credit upon a sound basis.[11] No other course is available when voters are apathetic, local officials either incompetent or merely indulgent, governmental organization antiquated, and creditors cunning. When the necessity thus arises, however, for the state to protect its own credit and that of other public borrowers within the jurisdiction, as well as to guard the interests of local investors, taxpayers and citizens, its legislators should recognize that administrative supervision is not completely effective unless the discretion of state authorities is actually substituted for that of local officials. The usual legislative provisions, in merely setting the bounds of local discretion, leave wide latitude for the abuse of municipal credit. Administrative bodies cannot safeguard that credit unless their supervision reaches even this residuum of local discretion.

B. Problems Inherent in Establishment of Effective Supervision

*Theoretical Objections.* While substitution of administrative discretion for that of local officials is the crux of effective state supervision of municipal credit, it is also the factor in such supervision that encounters the most serious obstacles. The familiar objection that this form of state control fosters "bureaucracy" and stifles local initiative, however, appeals more to the emotions than to the intellect.[1] It is only when local initiative has failed properly to manage a city's affairs that the state, as a matter of self-protection and of governmental responsibility to its other political subdivisions and to its citizens,[2] determines to intervene. If a city's loss of its autonomy is unduly distasteful, it presumably may ultimately regain power to exercise its local initiative by demonstrating an ability to use it wisely. Meanwhile the label of "bureaucracy" will not alter the fact that administrative supervision affords the greatest possible assurance of sound municipal credit.

*Practical Objections.* But administrative supervision of local credit is open to attack upon more practical grounds.[3] It is said, for instance, that

11. See Betters, State Centralization in North Carolina (1932) c. 4.

1. *Cf.* Stason, *State Administrative Supervision of Municipal Indebtedness* (1932) 30 Mich. L. Rev. 833, 843, 854.

2. Existing Statutory Provisions for Administration Supervision of Local Credit, *supra* III, at p. 979.

3. Kilpatrick, State Administrative Review of Local Budget Making (1927); *Has the Indiana Plan Been a Success?* (1932) 21 Nat. Mun. Rev. 101; Wallerstein, *What Local Officials Think of State Financial Control* (1832) 21 *id.* at 557; Porter, *Remote Control*

the possibilities of political influence and of incompetence in the management of local credit would remain, and would be increased by the unwillingness or inability of central supervisory agencies to understand local problems and to handle local activities. The state authorities, the argument continues, would seek to acquire a reputation for activity by first cutting undesirable expenditures and then allowing their return in subsequent budgets as "emergency measures;" by restricting tax levies for legitimate expenditures and then countenancing undue borrowing, or refunding or sinking fund delinquencies, in order to meet "current municipal expenses"; and by so limiting borrowing as to hold up necessary municipal improvements and services. That appointments or election to public office will be free from politics, or that the officials will be competent, can never be assured. These are dangers inherent in government of any kind. Yet state appointment affords ample opportunity for obtaining financial administrators who are more competent and less partisan[4] than are most of the officials in whose hands municipal credit lies today. Nor is the argument persuasive that state authorities, because of inadequate organization and lack of contact with local conditions, could not efficiently execute the functions delegated to them. There is no reason why the supervisory system could not, if necessary, be organized departmentally, with head and subordinate agencies, so that the widespread, close and constant local contact necessary to an adequate handling of municipal business could be achieved.

*Legal Objections: Delegation of Powers.* It is unlikely, moreover, that drastic alteration in the organic laws of any of the states would be required in order to make possible effective administrative supervision of local credit. The validity of delegating legislative functions to administrative agencies and conferring upon them such executive and judicial powers as may be necessary, can no longer be open to serious question.[5] Courts sensitive to the need for administrative supervision in other fields of governmental regulation have reduced the doctrine of non-delegability of powers to a requirement that the functions delegated be such as the legislature had power to exercise itself, or to confer, and that standards be set up for the guidance of administrative officials in applying general policies to particular facts.[6]

(1934) 7 STATE GOV'T 30. *Contra:* THAYS, CONTROL OF LOCAL FINANCE THROUGH TAXPAYERS' ASSOCIATIONS AND CENTRALIZED ADMINISTRATION (1934); Bates, *State Control of Local Finance In Indiana* (1926) 20 AM. POL. SCI. REV. 352; Leslie, *State Control of Local Expenditure—The Indiana Plan* (1932) 49 STONE AND WEBSTER J. 28; Zoercher, *Regarding the Indiana Tax Plan* (1932) 21 NAT. MUN. REV. 309.

4. In Indiana the members of the administrative bodies are reputed to be strictly nonpartisan and entirely removed from politics. Leslie, *supra* note 3, at 35.

5. By way of comparison, it is said that the Federal courts have never invalidated a Congressional delegation of power to an administrative officer or agency. See Chafee, *Congressional Reapportionment* (1929) 42 HARV. L. REV. 1015, 1044; *cf.* Note (1933) 31 MICH. L. REV. 786.

6. Consult BURDICK, LAW OF THE AMERICAN CONSTITUTION (1923) § 60; FREUND, AMERICAN ADMINISTRATIVE LAW (1923) 118-124; COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) 224-232; Foster, *The Delegation of Legislative Power to Administrative Officers* (1913) 7 ILL. L. REV. 397; Berle, *The Expansion of American Administrative Law* (1917) 30

That the legislature in delegating the legislative power may confer any executive and judicial powers which would be required for effective regulation by a state administrative body, has long been conceded.[7] And the legislative declarations of policy which purport to delimit the discretion of its agencies may be extremely broad and general.[8] In the last analysis, the criterion of a valid delegation of powers is the pragmatic test of the need for effective regulation.[9] Upon this score courts have had little difficulty in upholding administrative supervision of local credit.[10]

*Legal Objections: Home Rule.* The usual constitutional home rule guaranties extant in 17 states,[11] whereby certain classes of municipalities are permitted to frame their own charters and to govern their own affairs, may in some instance seem to interpose barriers to legislation creating centralized administrative control over local finances; but they are by no means insuperable. Such warranties of state non-intervention, even if not expressly made

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HARV. L. REV. 430; Cheadle, *The Delegation of Legislative Functions* (1918) 27 YALE L. J. 892; Duff and Whiteside, *Delegata Potestas Non Potest Delegari: A Maxim of American Constitutional Law* (1928) 14 CORN. L. Q. 168; Note (1929) 27 MICH. L. REV. 558; Note (1929) 5 WIS. L. REV. 111; Note (1932) 19 CALIF. L. REV. 448; Note (1932) 7 ST. JOHN'S L. REV. 77; Note (1933) 31 MICH. L. REV. 786; Note (1933) 1 GEO. WASH. L. REV. 231; (1924) 37 HARV. L. REV. 1118; (1928) 37 YALE L. J. 1151.

7. See COOLEY, *op. cit. supra* note 6, at 228, n. 2; Berle, *supra* note 6, at 440; Cheadle, *supra* note 6, at 894; Note (1932) 7 ST. JOHN'S L. REV. 77.

8. Thus the powers granted to the Interstate Commerce Commission to adjust railroad rates, with directions merely to eliminate "undue" and "unreasonable" preferences or "discrimination" in rates, were upheld. Intermountain Rate Cases, 234 U. S. 476 (1914). The delegation to a state board of completely discretionary power to grant or withhold a barber's license has recently been held valid. Clark v. State, 152 So. 820 (Miss. 1934). See also BURDICK, *op. cit. supra* note 6, at 153; Cheadle, *supra* note 6, at 899, 908-911; Note (1929) 27 MICH. L. REV. 558, 561; (1924) 37 HARV. L. REV. 1118-1120; *cf.* Compton v. Alabama Power Co., 216 Ala. 558, 114 So. 46 (1927); Snow v. Riggs, 172 Ark. 835, 290 S. W. 591 (1927).

9. The criteria of a valid delegation of such discretionary legislative power are the greater efficiency of administrative regulation and the presence of guiding standards of a degree of definiteness and comprehensiveness which will not sacrifice the flexible application and expert judgment required for effective regulation of the particular matter. Cheadle, *supra* note 6, at 921, 922; Duff and Whiteside, *supra* note 6, at 196; Note (1929) 27 MICH. L. REV. 558, 559; (1924) 37 HARV. L. REV. 1118, 1121.

10. Sparkman v. County Budget Commission, 103 Fla. 242, 137 So. 809 (1931) (upholding delegation to County Budget Commission of power to approve local budgets and revise items on basis of wisdom and expediency); Van Hess v. Board of Commissioners of St. Joseph County, 190 Ind. 347, 129 N. E. 305 (1921) (upholding delegation to State Board of Tax Commissioners of power to review local debt incurrence, as to legality and policy). Accord: State *ex rel.* Freeland v. Evans, 197 Ind. 656, 150 N. E. 788 (1926); State *ex rel.* Board of Commissioners of Kosciusko and Fulton Counties v. Leonard, 198 Ind. 356, 153 N. E. 777 (1926); Zoercher v. Agler, 202 Ind. 214, 172 N. E. 186 (1930) (upholding delegation to state Tax Commission of power to review the legality of local tax levies).

11. ARIZ. CONST. art. XIII; CAL. CONST. art. XI, §§ 8, 8½; COLO. CONST. art. XX, § 6; MD. CONST. art XI-A; MICH. CONST. art. VIII, §§ 20, 21; MINN. CONST. art. IV, § 36;

subject to the general laws of the state,[12] are always restricted to purely "municipal affairs;"[13] in matters of state-wide interest and public policy, state regulation is supreme.[14] Local financial standing, because of its effect on the credit both of the state and of other municipalities as well as on the welfare of investors, many of whom may be quasi-public institutions, is clearly of general state concern and so is a proper subject for state supervision.[15] If this view is adopted, central control over local indebtedness in any or all its phases, over all local expenditures, over local tax assessment and over local financial organization, by means of devices and to an extent and degree reasonably thought by the legislature to be necessary to the achievement of sound local credit, would not be violative of any home rule guaranties.[16]

Moreover, each of the credit factors alone may, to a certain extent, be considered of state concern, and therefore subject to state regulation independently of its relationship to credit maintenance.[17] In the constitutions of certain home rule states, for instance, there is reserved to the legislatures the power and duty to restrict municipal indebtedness, taxation and assessment[18] and to supervise municipal deposits.[19] Supervision of local budgets has been considered a state affair—a matter of state governmental organization necessary to the realization of a uniform system of taxation and fiscal administration.[20]

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Mo. CONST. art. IX, § 16; NEB. CONST. art. XI; N. Y. CONST. art. XII, §§ 2, 3; OHIO CONST. art. XVIII, §§ 2, 3, 7, 13; OKLA. CONST. art. XVIII, § 3; ORE. CONST. art. XI, § 2; PA. CONST. art. XV, § 1; TEX. CONST. art. XI, § 5; UTAH CONST. art. XI, § 5 (adopted 1933); WASH. CONST. art. XI, § 10; WIS. CONST. art. XI, § 3.

12. Constitutional Home-Rule powers are expressly made subject to general laws by: CAL. CONST. art. XI, §§ 6, 8; MICH. CONST. art. VIII, § 21; MINN. CONST. art. IV, § 36; N. Y. CONST. art. XII, § 2; OHIO CONST. art. VIII, § 3; UTAH CONST. art. XI, § 5 (adopted 1933); WASH. CONST. art. XI, § 10; WIS. CONST. art XI, § 3.

13. MCBAIN, THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE (1916) 673-684; MCGOLDRICK, THE LAW AND PRACTICE OF MUNICIPAL HOME RULE 1916-1930 (1933) c. 13.

14. This is equally true where the home rule guaranty originates from the so-called "inherent right" of self-government. Legis. (1933) 46 HARV. L. REV. 1317, 1322; see MCBAIN, *op. cit. supra* note 13, at 12-17.

15. See EXISTING STATUTORY PROVISIONS FOR ADMINISTRATIVE SUPERVISION OF LOCAL CREDIT, *supra* III, at p. 979; Legis. (1933) 46 HARV. L. REV. 1317, 1322, n. 50.

16. See Tulsa v. Dabney, 133 Okla. 54, 270 Pac. 1112 (1928); Van Hess v. Board of Commissioners of St. Joseph County, *supra* note 10. Both cases recognize state-wide interest in local credit in case of indebtedness regulation. See also, CLARK, THE INTERNAL DEBTS OF THE UNITED STATES (1933) 281; Tooke, *Construction of Municipal Powers* (1933) 7 TEMPLE L. Q. 267, 274.

17. See generally MCGOLDRICK, *op. cit. supra* note 13, at 338-345; Legis. (1933) 46 HARV. L. REV. 1317, 1322, 1323.

18. ARIZ. CONST. art. IX, § 8; MICH. CONST. art. VIII, § 20; Mo. CONST. art. X, §§ 1, 2; NEB. CONST. art. XI, § 4; N. Y. CONST. art. XII, § 1; OHIO CONST. art. XVIII, § 13; OKLA. CONST. art. X, § 20; ORE. CONST. art. XI, § 5; TEX. CONST. art. III, § 52.

19. CAL. CONST. art. XI, § 16½.

20. Zoercher v. Agler, *supra* note 10; State *ex rel.* City of Toledo v. Cooper, 97 Ohio St. 86, 119 N. E. 253 (1917); City of Sapulpa v. Land, 101 Okla. 22, 223 Pac. 640 (1924); Gilbert v. Fisher, 108 Okla. 67, 230 Pac. 705 (1924). However, by the following cases

Similarly, municipal taxation, assessment, levy and collection may be of general public interest since they may affect the basis for state taxation and the distribution of the burden of state taxes on property.[21] Furthermore, it is not questioned that the general fiscal organization and operation of municipalities is such an affair of state governmental organization as justifies state supervision over municipal accounts.[22]

In certain states, however, specific constitutional provisions would seem to preclude state control of certain aspects of the local credit situation and to restrain the use of certain devices of administrative supervision. In Colorado, home-rule municipalities are given exclusive power over the issuance, refunding and liquidation of all kinds of municipal obligations; the assessment of local property; the levy and collection of taxes thereon for municipal purposes; special assessments for local improvements; and the creation, terms, duties and qualifications of all municipal offices.[23] And in other states constitutional guaranties against the performance of local functions by other than local officials would appear to prevent use of the device of administrative substitution or other effective administrative control over local financial functions.[24] But ways of at least partially circumventing these inhibitions have been suggested.[25] Thus, under the New York[26] and Wisconsin[27] constitutions, which provide for local election or appointment of authorities to perform the functions exercised by the political unit at the date of adoption of the constitution, courts have been able to permit a measure of central financial control on the ground that local governments, when the state constitution was adopted, did not vest any official with a veto power over financial plans.[28] The performance of local tax assessment and collection has been held to be a state governmental function, thus removing it from the effect of this provision and permitting the state

supervision of budgets, to be valid, must be limited to ministerial examination, not policy review or revision. Ryan v. Roach Drug Co., 113 Okla. 130, 239 Pac. 912 (1925); City of Pawhuska v. Pawhuska Oil & Gas Co., 118 Okla. 201, 248 Pac. 336 (1926); Grubb v. Smiley, 142 Okla. 19, 285 Pac. 38 (1930); Bonaparte v. Nelson, 142 Okla. 54, 285 Pac. 100 (1929); Monsell v. Excise Board Tulsa County, 142 Okla. 130, 285 Pac. 836 (1930); *cf.* Zoercher v. Agler, *supra* note 10, at 227, 172 N. E. at 191.

21. Pacific Fruit Express Co. v. City of Yuma, 32 Ariz. 601, 261 Pac. 49 (1927); State *ex rel.* Zielonka v. Carrel, 99 Ohio St. 220, 124 N. E. 134 (1919); Okla. News Co. v. Ryan, 101 Okla. 151, 224 Pac. 969 (1924); City of Ardmore v. Excise Board, 155 Okla. 126, 8 P. (2d) 2 (1932); State *ex rel.* King County v. Tax Commission, 26 P. (2d) 80 (Wash. 1933); State *ex rel.* Hessey v. Daniels, 143 Wis. 649, 128 N. W. 565 (1910); see McBAIN, *op. cit. supra* note 13, at 277; MCGOLDRICK, *op. cit. supra* note 13, at 340-342; Legis. (1933) 46 HARV. L. REV. 1317, 1323, n. 52. *Contra:* Morton v. Broderick, 118 Cal. 474, 50 Pac. 644 (1897); *Ex parte* Braun, 141 Cal. 204, 74 Pac. 780 (1903).

Regarding special assessments see MCGOLDRICK, *op. cit. supra* note 13, at 343-346.

22. State *ex rel.* Clausen v. Burr, 65 Wash. 524, 118 P. 639 (1911).

23. COLO. CONST. art. XX, § 6(a), (e), (g).

24. Legis. (1933) 46 HARV. L. REV. 1317, 1323 *et seq.*

25. *Ibid.*

26. N. Y. CONST. art. X, § 2.

27. WIS. CONST. art. XIII, § 9.

28. Legis. (1933) 46 HARV. L. REV. 1317, 1323, n. 60.

officials to review and order reassessment of local taxes.[29] Under the exceptive doctrine that where the office is temporary in character the state-appointed officer is non-local and so escapes the restrictions of the constitutional provision,[30] at least temporary administrative supervision and municipal receivership instituted because of default can be upheld, because they terminate when the city's finances are rehabilitated. Likewise sustainable under this exception are statutes which allow the local taxing process to be carried on by other than usual officials on their non-action or absence.[31] And it is not impossible, although it may be awkward, for the legislature to avoid the restrictions of this provision in individual cases by substituting new units with new officers.[32]

Under eight constitutions which provide that the necessary officers of particular classes of municipalities shall be elected by the voters thereof,[33] the temporary character or the public interest in state administrative supervision may again form bases of validity. The seven constitutions which forbid the legislature to delegate to any special commission power to supervise or interfere with municipal money, property or effects, or to levy taxes or perform any municipal function whatever,[34] present a more difficult problem. Obviously, such provisions preclude the use of special receivership commissions like those of Manchester, New Hampshire[35] and Fall River, Massachusetts.[36] Indeed, these provisions might be construed to prevent any commission control of local finance. But since they were adopted in an attempt to avert special abusive treatment of individual municipalities,[37] it may be argued that they were not meant to apply to state commissions created to supervise permanently the financial affairs of all municipalities.[38] A way out might also be sought in judicial interpretation excluding permanent commissions with regular duties from the prohibited class of "special commissions."[39] Where the supervisory

29. See note 21, *supra.*

30. People v. McDonald, 69 N. Y. 362 (1877); People v. Board of Supervisors, 170 N. Y. 105, 62 N. E. 1092 (1902); Strange v. Oconto Land Co., 136 Wis. 516, 117 N. W. 1023 (1908); McBAIN, *op. cit. supra* note 13, at 36, note 1.

31. Strange v. Oconto Land Co., *supra* note 30. *Cf.* 1 McQUILLIN, MUNICIPAL CORPORATIONS (1931) § 187, p. 510.

32. See McBAIN, *op. cit. supra* note 13, at 36-37.

33. CAL. CONST. art. II, § 2¾; KY. CONST. § 160; LA. CONST. art XIV, § 22; NEB. CONST. art. IX, § 4; OHIO CONST. art. X, § 1, art. II, § 27; PA. CONST. art. XIV, §§ 1, 2; VA. CONST. § 120; WASH. CONST. AMEND. 12.

34. CAL. CONST. art. XI, § 13; COLO. CONST. art. V, § 35; MONT. CONST. art. V, § 36; PA. CONST. art. III, § 20; S. D. CONST. art. III, § 26; UTAH CONST. art. VI, § 29; WYO. CONST. art. III, § 37.

35. N. H. Laws 1921, c. 226.

36. Mass. Acts 1931, c. 44.

37. See McBAIN, *op. cit. supra* note 13, at 46, 47.

38. Public Service Commission v. City of Helena, 52 Mont. 527, 539, 159 Pac. 24, 27 (1916). But *cf.* People v. Loveland, 76 Colo. 188, 230 Pac. 399 (1924); Logan City v. Public Utilities Commission, 72 Utah 536, 271 Pac. 961 (1928).

39. *In re* Senate Bill, 12 Colo. 188, 21 Pac. 481 (1889); *In re* Fine & Excise Commission, 19 Colo. 482, 36 Pac. 234 (1894); City of Denver v. Landoner, 33 Colo. 104, 80 Pac. 117 (1905); City of Denver v. Iliff, 38 Colo. 357, 89 Pac. 823 (1906).

powers are exercised by an individual, courts are of course offered the opportunity of evading the prohibition by holding that such a person is not a commission.[40]

Another constitutional provision, found in four states, which may interfere with central administrative control of local finance is that forbidding the state legislature to impose taxes for municipal purposes.[41] This restriction has been held to prevent extension of administrative control over local budgets and tax levies beyond the determination of legality;[42] to permit a state administrative body to substitute its discretion by approval or review of local expenditure policy, it is insisted, would be to give that body unconstitutional power to levy, assess and collect taxes for local purposes in which the state has no sovereign interest.[43] It is quite conceivable, however, that the state, since it is intimately concerned with the financial stability of its subdivisions, would be very much interested in purely local expenditure policies because of their effect on local credit.[44] The same type of constitutional provision has been held by one court to prevent a State Tax Commission from reassessing property for local taxation purposes, but not from reviewing local tax assessments;[45] although review, like reassessment, is sometimes alleged to be tantamount to imposition of local taxes, the court based its approval upon the general interest in the state revenue system—a fact which could equally well be used to justify reassessment.

What has been said, clearly enough, is by no means sufficient to warrant dismissing as of small consequence the obstacles to effective administrative supervision of local credit interposed by the home-rule provisions of many state constitutions. Nevertheless, courts cognizant of the fact that municipal home-rule provisions were designed to prevent legislative exploitation of municipalities[46] might be willing to minimize application of such restrictions to a central administrative supervision which looks to the correction of local mismanagement and the better maintenance of municipal credit. They might be quick to take advantage of any legal circumvention of a home rule restriction where the economic, social and political need for administrative control is made apparent to them by the legislature. They might even be willing to evade specific restrictions against the interference of state officials or commissions in local affairs and against state imposition of local taxes, by holding the subjects and objects of such intervention to be not purely municipal but also state affairs. But even though it be conceded that the courts may feel constrained to give literal effect to specific constitutional prohibitions, execution of a plan of cen-

40. Kraus v. Philadelphia, 265 Pa. 425, 109 Atl. 226 (1919).

41. CAL. CONST. art. XI, § 12; COLO. CONST. art. X, § 70; OKLA. CONST. art. X, § 20; WASH. CONST. art. XI, § 12.

42. City of Ardmore v. Excise Board, *supra* note 21.

43. *Id.* at 134, 8 P. (2d) at 10.

44. See ADMINISTRATIVE SUPERVISION OF LOCAL TAX BASES AND OF EXPENDITURES, *supra* III-B.

45. State *ex rel.* King County v. Tax Commission, *supra* note 21.

46. See MCBAIN, *op. cit. supra* note 13, Part I; MCGOLDRICK, *op. cit. supra* note 13, at 339; LANCASTER, STATE SUPERVISION OF MUNICIPAL INDEBTEDNESS (1923) 103-104.

tral administrative control over local finances is still not foreclosed. There is no such difficulty in amending state constitutions as in amending the federal Constitution. If preservation of municipal credit is deemed of sufficient importance, as it must be, and if, as is extremely likely, a large enough group is affected by the consequences of local financial mismanagement, barriers which cannot be surmounted can with slight inconvenience be removed.

### C. Conclusion: The Relation Between Bankruptcy Discharges and Administrative Supervision

Bankruptcy legislation and careful state supervision of local credit are both essential to proper solution of the vital and complex problem presented by current municipal insolvencies; yet since each of these deals only with a part of the problem, neither alone is sufficient. The availability of a means of enforcing readjustment plans, it is true, appears to be necessary if many taxing districts are to meet the present crisis in their financial affairs. But enactment of the Sumners Bill as it is now drawn would afford no constructive relief for municipal debtors, since without assurance either of the wisdom of a readjustment plan or of the correction of financial malpractices there could be no certainty that the city would not find itself back in the bankruptcy court after a few months or a few years. Moreover, enactment of this bill would be definitely unwise, both because it imposes upon municipal readjustments all of the evils of reorganization through receivership and because the easy avenue of escape which it provides from immediate problems might remove the incentive for consideration of supervision of local credit by state legislatures.

Proper treatment of the problem of local credit could best be assured if the Sumners Bill were amended to make bankruptcy enforcement of municipal readjustment plans available only when petitioned for not by the city itself but by a permanent state administrative agency. To qualify as a petitioner such an agency should possess the necessary power to inform itself, both before and after local defaults, of the financial condition and amount and character of the indebtedness of local governments; and it should have the authority to assume effective supervision of every aspect of the defaulting taxing district's credit management as soon as the district's financial distress is discovered, either itself to prepare a readjustment plan or at least to act for the city in negotiating such a plan, and to supervise the execution of the plan and the rehabilitation of the district's credit structure. Submission of a readjustment plan so formulated, or the formulation of which has been so supervised, to the bankruptcy judge should be only for the purpose of securing his approval of the reasonableness of the decisions of the administrative agency. Flexible operation of the plan should be assured by authorizing relaxation of its terms, when required by unforeseen public emergencies, upon recommendation by the state agency and approval by the bankruptcy judge.

A provision thus making a minimum of state administrative supervision of local credit a condition precedent to the availability of bankruptcy enforcement of municipal readjustment agreements would encounter practical objections only

in its denial of relief to a city situated in a state wherein the legislature had failed to act. Upon more theoretical grounds it may also be argued that such a provision would unduly increase federal interference in state affairs. The same answers may be made to both objections. National interest in the reestablishment of sound public credit and in the protection of those insurance, banking and charitable corporations which are investors in the securities of local governments, alone would justify Congress in seeking to induce state legislatures properly to supervise local credit. Indeed, in view of the direct financial control now being exercised over so many municipalities by Federal agencies through the medium of P. W. A. loans and R. F. C. refinancing, it would seem idle to pose the theoretical undesirability of Federal interference. More important, however, is the fact that no federal venture into the field of local finance should be undertaken unless that venture has reasonable prospect of achieving its objective. Congress should not make a bankruptcy discharge available to municipal debtors if that discharge will not afford substantial and constructive relief. Thus viewed, the attempt to induce state legislatures to provide a minimum of administrative supervision of local credit is merely a device for making effective the proffered bankruptcy relief; and the discrimination resulting would amount only to a refusal to burden the federal courts with the granting of ineffective relief.